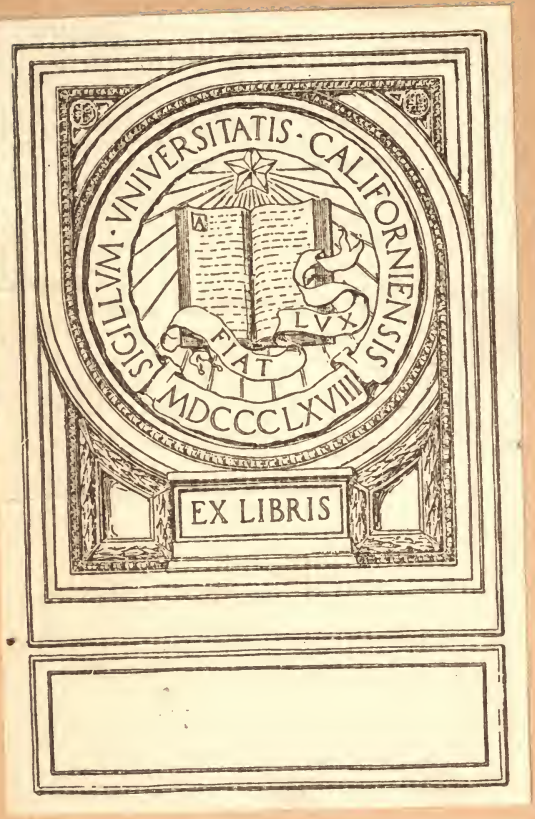
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THE WORKS

OF

JOHN ADAMS.

THE

WORKS

OF

JOHN ADAMS,

SECOND PRESIDENT OF THE UNITED STATES:

WITH

A LIFE OF THE AUTHOR,

NOTES AND ILLUSTRATIONS,

BY

HIS GRANDSON

CHARLES FRANCIS ADAMS.

VOL. IV.

BOSTON:
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CONTROVERSIAL PAPERS

OF THE

REVOLUTION,

CONTINUED.

NOVANGLUS:

OR,

A HISTORY

OF THE

DISPUTE WITH AMERICA,

FROM ITS ORIGIN, IN 1754, TO THE PRESENT TIME

WRITTEN IN 1774, BY

JOHN ADAMS.

The occasion of the production of the series of papers signed *Novanglus*, in the Boston Gazette of 1774, is given in the Diary[1] of the author. A writer for the government, under the signature of *Massachusettensis*, supposed by Mr. Adams to be Jonathan Sewall, but who is now understood to have been Daniel Leonard, had made some impression upon public opinion in Massachusetts. His articles, first printed in the Massachusetts Gazette and Post-Boy, immediately attracted much public attention, and called out many replies. They were forthwith collected and printed in a pamphlet form in Boston; republished by James Rivington, in New York, in the same year, under the title of "The Origin of the American Contest with Great Britain, or the present Political State of the Massachusetts Bay in general, and the town of Boston in particular; exhibiting the Rise and Progress of the disordered State of that Country, in a series of weekly Essays, published at Boston, under the signature of Massachusettensis, a Native of New England;" and still another edition was issued in Boston, by J. Mathews, probably during the siege of that place, in the next year, 1776.

The papers of Novanglus, in reply to Massachusettensis, were reprinted in Almon's Remembrancer for 1775, in an abridged form, and bearing the following title: "History of the Dispute with America, from its Origin, in 1754, to the present Time." This was reprinted in pamphlet form, in London, by John Stockdale, in 1784, with the name of the author. Previous to this time, a Dutch translation had been made in Holland, apparently for the purpose of extending information respecting the struggle, and inspiring confidence in the author, when he was soliciting an alliance for the United States with that country; and it was published at Amsterdam, by W. Holtrop, 1782, with a portrait. Last of all, the papers of Novanglus and Massachusettensis, in their original form, were collected in one volume, in 1819, and printed by Hews and Goss, in Boston, to which was prefixed the preface which immediately follows.

[1] Vol. ii. p. 405.

PREFACE

TO THE EDITION OF 1819.

Jonathan Sewall was descended from Mitchells and Hulls and Sewalls, and I believe Higginsons, that is, from several of the ancient and venerable of New England families. But, as I am no genealogist, I must refer to my aged classmate and highly-esteemed friend, Judge Sewall, of York, whose researches will one day explain the whole.

Mr. Sewall's father was unfortunate; died young, leaving his son destitute; but as the child had discovered a pregnant genius, he was educated by the charitable contribution of his friends, of whom Dr. Samuel Cooper was one of the most active and successful, among his opulent parishioners. Mr. Sewall graduated at college in 1748; kept a Latin school in Salem till 1756, when Chambers Russell, of Lincoln, a judge of the supreme court and a judge of admiralty, from a principle of disinterested benevolence, received him into his family, instructed him in law, furnished him with books, and introduced him to the practice at the bar. In 1757 and 1758, he attended the supreme court in Worcester, and spent his evenings with me, in the office of Colonel James Putnam, a gentleman of great acuteness of mind, and very extensive and successful practice, and an able lawyer, in whose family I boarded, and under whose auspices I studied law. Here commenced between Mr. Sewall and me a personal friendship, which continued, with none but political interruptions, till his death. He commenced practice in Charlestown, in

the county of Middlesex; I, in that parish of the ancient town of Braintree, now called Quincy, then in the county of Suffolk, now of Norfolk. We attended the courts in Boston, Cambridge, Charlestown, and Concord; lived together, frequently slept in the same chamber, and not seldom in the same bed. Mr. Sewall was then a patriot; his sentiments were purely American. To James Otis, who took a kind notice of us both, we constantly applied for advice in any difficulty; and he would attend to us, advise us, and look into books for us, and point out authorities to us, as kindly as if we had been his pupils or his sons.

After the surrender of Montreal, in 1759, rumors were everywhere spread, that the English would now new-model the Colonies, demolish the charters, and reduce all to royal governments. These rumors I had heard as often as he had. One morning I met him accidentally on the floor of the old town-house. "John," said he, "I want to speak with you." He always called me John, and I him Jonathan; and I often said to him, I wish my name were David. He took me to a window-seat and said, "These Englishmen are going to play the devil with us. They will overturn every thing. We must resist them, and that by force. I wish you would write in the newspapers, and urge a general attention to the militia, to their exercises and discipline, for we must resist in arms." I answered, "All this, I fear, is true; but why do you not write yourself? You are older than I am, have more experience than I have, are more intimate with the grandees than I am, and you can write ten times better than I can." There had been a correspondence between us, by which I knew his refined style, as well as he knew my coarse one. "Why," said Mr. Sewall, "I would write, but Goffe will find me out, and I shall grieve his righteous soul, and you know what influence he has in Middlesex." This Goffe had been attorney-general for twenty years, and commanded the practice in Middlesex and Worcester and several other counties. He had power to crush, by his frown or his nod, any young lawyer in his county. He was afterwards Judge Trowbridge,[1] but at that time as ardent as any of Hutchinson's disciples, though he afterwards became alienated from his pursuits and principles.

[1] He changed his name. See vol. ii. p. 196, note.

In December, 1760, or January, 1761, Stephen Sewall, chief justice, died, deeply lamented, though insolvent. My friend Jonathan, his nephew, the son of his brother, who tenderly loved and deeply revered his uncle, could not bear the thought, that the memory of the chief justice should lie under the imputation of bankruptcy. At that time bankruptcy was infamous; now it is scarcely disgraceful. Jonathan undertook the administration of his uncle's estate. Finding insolvency inevitable, he drew a petition to the General Court, to grant a sum of money sufficient to pay the chief justice's debts. If my friend had known the character of his countrymen, or the nature of that assembly, he never would have conceived such a project; but he did conceive it, and applied to James Otis and his father, Colonel Otis, to patronize and support it. The Otises knew their countrymen better than he did. They received and presented the petition, but without much hope of success. The petition was rejected; and my friend Sewall conceived a suspicion that it was not promoted with so much zeal by the Otises, as he thought they might have exerted. He imputed the failure to their coldness, was much mortified, and conceived a violent resentment, which he expressed with too much freedom and feeling in all companies.

Goffe, Hutchinson, and all the courtiers soon heard of it, and instantly fastened their eyes upon Sewall, courted his society, sounded his fame, promoted his practice, and soon after made him solicitor-general, by creating a new office expressly for him. Mr. Sewall had a soft, smooth, insinuating eloquence, which, gliding imperceptibly into the minds of a jury, gave him as much power over that tribunal as any lawyer ought ever to possess. He was also capable of discussing before the court any intricate question of law, which gave him at least as much influence there as was consistent with an impartial administration of justice. He was a gentleman and a scholar, had a fund of wit, humor, and satire, which he used with great discretion at the bar, but poured out with unbounded profusion in the newspapers. Witness his voluminous productions in the newspapers, signed *long J.* and *Philanthropos.* These accomplishments richly qualified him to serve the purposes of the gentlemen who courted him into their service.

Mr. Sewall soon fell in love with Miss Esther Quincy, the fourth daughter of Edmund Quincy, an eminent merchant and magistrate, and a granddaughter of that Edmund Quincy, who was eighteen years a judge of the superior court, who died of the small-pox in the agency of the province, at the Court of St. James, and whose monument was erected, at the expense of the province, in Bun-hill-fields, London. This young lady, who was celebrated for her beauty, her vivacity, and spirit, lived with her father, in this parish, now called Quincy. Mr. Sewall's courtship was extended for several years; and he came up very constantly on Saturdays, and remained here until Mondays; and I was sure to be invited to meet him on every Sunday evening. During all these years, there was a constant correspondence between us, and he concealed nothing from me, so that I knew him by his style whenever he appeared in print.

In 1766, he married the object of his affections, and an excellent wife he found her. He was soon appointed attorney-general. In 1768, he was employed by Governor Bernard to offer me the office of advocate-general in the court of admiralty, which I decidedly and peremptorily, though respectfully, refused.

We continued our friendship and confidential intercourse, though professedly in boxes of politics as opposite as east and west, until the year 1774, when we both attended the superior court in Falmouth, Casco Bay, now Portland. I had then been chosen a delegate to Congress. Mr. Sewall invited me to take a walk with him, very early in the morning, on the great hill. In the course of our rambles, he very soon began to remonstrate against my going to Congress. He said, that "Great Britain was determined on her system; her power was irresistible, and would certainly be destructive to me, and to all those who should persevere in opposition to her designs." I answered, "that I knew Great Britain was determined on her system, and that very determination determined me on mine; that he knew I had been constant and uniform in opposition to all her measures; that the die was now cast; I had passed the Rubicon; swim or sink, live or die, survive or perish with my country, was my unalterable determination." The conversation was protracted into length, but this was the substance of the whole. It terminated in my saying to him, "I see we must part, and with a

bleeding heart I say, I fear forever; but you may depend upon it, this adieu is the sharpest thorn on which I ever set my foot." I never conversed with him again till the year 1788. Mr. Sewall retired, in 1775, to England, where he remained, and resided in Bristol.

On my return from Congress, in the month of November, 1774, I found the Massachusetts Gazette teeming with political speculations, and Massachusettensis shining like the moon among the lesser stars. I instantly knew him to be my friend Sewall, and was told he excited great exultation among the tories and many gloomy apprehensions among the whigs. I instantly resolved to enter the lists with him, and this is the history of the following volume.

In 1788, Mr. Sewall came to London to embark for Halifax. I inquired for his lodgings, and instantly drove to them, laying aside all etiquette to make him a visit. I ordered my servant to announce John Adams, was instantly admitted, and both of us, forgetting that we had ever been enemies, embraced each other as cordially as ever. I had two hours conversation with him, in a most delightful freedom, upon a multitude of subjects. He told me he had lived for the sake of his two children; he had spared no pains nor expense in their education, and he was going to Halifax in hope of making some provision for them. They are now two of the most respectable gentlemen in Canada. One of them a chief justice, the other an attorney-general. Their father lived but a short time after his return to America; evidently broken down by his anxieties, and probably dying of a broken heart. He always lamented the conduct of Great Britain towards America. No man more constantly congratulated me, while we lived together in America, upon any news, true or false, favorable to a repeal of the obnoxious statutes and a redress of our grievances; but the society in which he lived had convinced him that all resistance was not only useless but ruinous,

More conscious than ever of the faults in the style and arrangement, if not in the matter, of my part of the following papers, I shall see them in print with more anxiety than when they were first published. The principles, however, are those on which I then conscientiously acted, and which I now most cordially approve.

To the candor of an indulgent nation, whom I congratulate on their present prosperity and pleasing prospects, and for whose happiness I shall offer up my dying supplications to Heaven, I commit the volume with all its imperfections.

JOHN ADAMS.

QUINCY, JANUARY 1, 1819.[1]

[1] On the fourteenth of October, 1821, Mr. Adams wrote a letter to Abraham Holmes of Rochester, in which he expresses doubts of the correctness of his opinion given in this preface, that Mr. Sewall was the author of Massachusettensis. His words are these: —

"I have great reason to suspect that I was mistaken in imputing Massachusettensis to Mr. Sewall. The testimony of Judge Chipman, of St. Johns, New Brunswick, and of Judge Leonard, of London, both of them authorities too respectable to be controverted, ascribes those papers to Mr. Daniel Leonard. This makes no alteration in the argument, but the *jus suum cuique* is of eternal obligation. I have had, in the early part of my life, nearly equal esteem for both of these characters, and am willing that justice should be done between them."

NOVANGLUS.

ADDRESSED TO THE INHABITANTS OF THE COLONY OF MASSACHUSETTS BAY.

NO. I.

My Friends, — A writer, under the signature of *Massachusettensis*, has addressed you, in a series of papers, on the great national subject of the present quarrel between the British administration and the Colonies. As I have not in my possession more than one of his essays, and that is in the Gazette of December 26, I will take the liberty, in the spirit of candor and decency, to bespeak your attention upon the same subject.

There may be occasion to say very severe things, before I shall have finished what I propose, in opposition to this writer, but there ought to be no reviling. *Rem ipsam dic, mitte male loqui*, which may be justly translated, speak out the whole truth boldly, but use no bad language.

It is not very material to inquire, as others have done, who is the author of the speculations in question. If he is a disinterested writer, and has nothing to gain or to lose, to hope or to fear, for himself more than other individuals of your community; but engages in this controversy from the purest principles, the noblest motives of benevolence to men, and of love to his country, he ought to have no influence with you, further than truth and justice will support his argument. On the other hand, if he hopes to acquire or preserve a lucrative employment, to screen himself from the just detestation of his countrymen, or whatever other sinister inducement he may have, so far as the truth of facts and the weight of argument are in his favor, he ought to be duly regarded.

He tells you, "that the temporal salvation of this province

depends upon an entire and speedy change of measures, which must depend upon a change of sentiment respecting our own conduct and the justice of the British nation."[1]

The task of effecting these great changes, this courageous writer has undertaken in a course of publications in a newspaper. *Nil desperandum* is a good motto, and *nil admirari* is another. He is welcome to the first, and I hope will be willing that I should assume the last. The public, if they are not mistaken in their conjecture, have been so long acquainted with this gentleman, and have seen him so often disappointed, that if they were not habituated to strange things, they would wonder at his hopes, at this time, to accomplish the most unpromising project of his whole life. In the character of *Philanthrop*, he attempted to reconcile you to Mr. Bernard. But the only fruit of his labor was, to expose his client to more general examination, and consequently to more general resentment and aversion. In the character of *Philalethes*, he essayed to prove Mr. Hutchinson a patriot, and his letters not only innocent but meritorious. But the more you read and considered, the more you were convinced of the ambition and avarice, the simulation and dissimulation, the hypocrisy and perfidy of that destroying angel.

This ill-fated and unsuccessful, though persevering writer, still hopes to change your sentiments and conduct, by which it is supposed that he means to convince you, that the system of colony administration which has been pursued for these ten or twelve years past is a wise, righteous, and humane plan; that Sir Francis Bernard and Mr. Hutchinson, with their connections, who have been the principal instruments of it, are your best friends; and that those gentlemen, in this province, and in all the other colonies, who have been in opposition to it, are, from ignorance, error, or from worse and baser causes, your worst enemies.

[1] "Were I not fully convinced, upon the most mature deliberation that I am capable of, that the temporal salvation of this province depends upon an entire and speedy change of measures, which must depend upon a change of sentiment respecting our own conduct and the justice of the British nation, I never should have obtruded myself on the public. I repeat my promise, to avoid personal reflection, as much as the nature of the task will admit of; but will continue faithfully to expose the wretched policy of the whigs, though I may be obliged to penetrate the arcana, and discover such things as, were there not a necessity for it, I should be infinitely happier in drawing a veil over, or covering with a mantle." *Massachusettensis.*

This is certainly an inquiry that is worthy of you; and I promise to accompany this writer in his ingenious labors to assist you in it. And I earnestly entreat you, as the result of all shall be, to change your sentiments or persevere in them, as the evidence shall appear to you, upon the most dispassionate and impartial consideration, without regard to his opinion or mine.

He promises to avoid personal reflections, but to "penetrate the arcana" and "expose the wretched policy of the whigs." The cause of the whigs is not conducted by intrigues at a distant court, but by constant appeals to a sensible and virtuous people; it depends entirely on their good-will, and cannot be pursued a single step without their concurrence, to obtain which, all their designs, measures, and means, are constantly published to the collective body. The whigs, therefore, can have no arcana; but if they had, I dare say they were never so left, as to communicate them to this writer; you will therefore be disappointed, if you expect from him any thing which is true, but what has been as public as records and newspapers could make it.

I, on my part, may, perhaps, in a course of papers, penetrate arcana too; show the wicked policy of the tories; trace their plan from its first rude sketches to its present complete draught; show that it has been much longer in contemplation than is generally known, — who were the first in it — their views, motives, and secret springs of action, and the means they have employed. This will necessarily bring before your eyes many characters, living and dead. From such a research and detail of facts, it will clearly appear, who were the aggressors, and who have acted on the defensive from first to last; who are still struggling, at the expense of their ease, health, peace, wealth, and preferment, against the encroachments of the tories on their country, and who are determined to continue struggling, at much greater hazards still, and, like the Prince of Orange, are resolved never to see its entire subjection to arbitrary power, but rather to die fighting against it in the last ditch.

It is true, as this writer observes, "that the bulk of the people are generally but little versed in the affairs of state;" that they "rest the affairs of government in the hands where accident has placed them." If this had not been true, the designs of the tories had been many years ago entirely defeated. It was clearly seen by a few, more than ten years since, that they were plan-

ning and pursuing the very measures we now see executing. The people were informed of it, and warned of their danger; but they had been accustomed to confide in certain persons, and could never be persuaded to believe, until prophecy became history. Now, they see and feel that the horrible calamities are come upon them, which were foretold so many years ago, and they now sufficiently execrate the men who have brought these things upon them. Now, alas! when perhaps it is too late. If they had withdrawn their confidence from them in season, they would have wholly disarmed them.

"The same game, with the same success, has been played in all ages and countries," as Massachusettensis observes. When a favorable conjuncture has presented, some of the most intriguing and powerful citizens have conceived the design of enslaving their country, and building their own greatness on its ruins. Philip and Alexander are examples of this in Greece; Cæsar in Rome; Charles V. in Spain; Louis XII. in France; and ten thousand others.

"There is a latent spark in the breasts of the people, capable of being kindled into a flame, and to do this has always been the employment of the disaffected." What is this latent spark? The love of liberty. *A Deo hominis est indita naturæ.* Human nature itself is evermore an advocate for liberty. There is also in human nature a resentment of injury and indignation against wrong; a love of truth, and a veneration for virtue. These amiable passions are the "latent spark" to which those whom this writer calls the "disaffected" apply. If the people are capable of understanding, seeing, and feeling the difference between true and false, right and wrong, virtue and vice, to what better principle can the friends of mankind apply, than to the sense of this difference? Is it better to apply, as this writer and his friends do, to the basest passions in the human breast — to their fear, their vanity, their avarice, ambition, and every kind of corruption? I appeal to all experience, and to universal history, if it has ever been in the power of popular leaders, uninvested with other authority than what is conferred by the popular suffrage, to persuade a large people, for any length of time together, to think themselves wronged, injured, and oppressed, unless they really were, and saw and felt it to be so.

"They," the popular leaders, "begin by reminding the people

of the elevated rank they hold in the universe, as men; that all men by nature are equal; that kings are but the ministers of the people; that their authority is delegated to them by the people, for their good, and they have a right to resume it, and place it in other hands, or keep it themselves, whenever it is made use of to oppress them. Doubtless, there have been instances when these principles have been inculcated to obtain a redress of real grievances; but they have been much oftener perverted to the worst of purposes."

These are what are called revolution principles. They are the principles of Aristotle and Plato, of Livy and Cicero, and Sidney, Harrington, and Locke; the principles of nature and eternal reason; the principles on which the whole government over us now stands. It is therefore astonishing, if any thing can be so, that writers, who call themselves friends of government, should in this age and country be so inconsistent with themselves, so indiscreet, so immodest, as to insinuate a doubt concerning them.

Yet we find that these principles stand in the way of Massachusettensis and all the writers of his class. The Veteran, in his letter to the officers of the army, allows them to be noble and true; but says the application of them to particular cases is wild and utopian.[1] How they can be in general true, and not applicable to particular cases, I cannot comprehend. I thought their being true in general, was because they were applicable in most particular cases.

Gravity is a principle in nature. Why? Because all particular bodies are found to gravitate. How would it sound to say, that bodies in general are heavy; yet to apply this to particular bodies, and say, that a guinea or a ball is heavy, is wild? "Adopted in private life," says the honest amiable veteran, "they would introduce perpetual discord." This I deny; and I think it plain, that there never was a happy private family where they were not adopted. "In the state, perpetual discord." This I deny; and affirm, that order, concord, and stability in

[1] This refers to a well-written pamphlet, entitled "A Letter from a Veteran to the Officers of the Army, encamped at Boston," and printed without date of place, in 1774. The purport of it is to deprecate excessive harshness in the punishment about to be inflicted on the rebellious colonists.

To a thorough understanding of the American Revolution by future generations, a general history of the mass of pamphlets which it occasioned is becoming very essential.

this state, never was nor can be preserved without them. "The least failure in the reciprocal duties of worship and obedience in the matrimonial contract would justify a divorce." This is no consequence from these principles. A total departure from the ends and designs of the contract, it is true, as elopement and adultery, would by these principles justify a divorce; but not the least failure, or many smaller failures in the reciprocal duties, &c. "In the political compact, the smallest defect in the prince, a revolution." By no means; but a manifest design in the prince, to annul the contract on his part, will annul it on the part of the people. A settled plan to deprive the people of all the benefits, blessings, and ends of the contract, to subvert the fundamentals of the constitution, to deprive them of all share in making and executing laws, will justify a revolution.

The author of a "Friendly Address to all reasonable Americans"[1] discovers his rancor against these principles in a more explicit manner; and makes no scruples to advance the principles of Hobbes and Filmer boldly, and to pronounce damnation, *ore rotundo*, on all who do not practise implicit, passive obedience to an established government, of whatever character it may be. It is not reviling, it is not bad language, it is strictly decent to say, that this angry bigot, this ignorant dogmatist, this foul-mouthed scold, deserves no other answer than silent contempt. Massachusettensis and the Veteran — I admire the first for his art, the last for his honesty.

Massachusettensis is more discreet than any of the others; sensible that these principles would be very troublesome to him, yet conscious of their truth, he has neither admitted nor denied them. But we have a right to his opinion of them, before we dispute with him. He finds fault with the application of them. They have been invariably applied, in support of the revolution and the present establishment, against the Stuarts, the Charleses, and the Jameses, in support of the Reformation and the Protestant religion; and against the worst tyranny that the genius of toryism has ever yet invented; I mean the Roman superstition.

[1] This is the title of a pamphlet published anonymously, and without date of place, in the year 1774. It is supposed to have been the work of Dr. Myles Cooper, President of King's College, New York, a gentleman who came from the mother country to fill that post, and whose political principles inclined towards the absolute school. The drift of the pamphlet seems to be to rouse the jealousy of the English church against the puritan republicanism of New England.

Does this writer rank the revolution and present establishment, the Reformation and Protestant religion, among his worst of purposes? What "worse purpose" is there than established tyranny? Were these principles ever inculcated in favor of such tyranny? Have they not always been used against such tyrannies, when the people have had knowledge enough to be apprized of them, and courage to assert them? Do not those who aim at depriving the people of their liberties, always inculcate opposite principles, or discredit these?

"A small mistake in point of policy," says he, "often furnishes a pretence to libel government, and persuade the people that their rulers are tyrants, and the whole government a system of oppression." This is not only untrue, but inconsistent with what he said before. The people are in their nature so gentle, that there never was a government yet in which thousands of mistakes were not overlooked. The most sensible and jealous people are so little attentive to government, that there are no instances of resistance, until repeated, multiplied oppressions have placed it beyond a doubt, that their rulers had formed settled plans to deprive them of their liberties; not to oppress an individual or a few, but to break down the fences of a free constitution, and deprive the people at large of all share in the government, and all the checks by which it is limited. Even Machiavel himself allows, that, not ingratitude to their rulers, but much love, is the constant fault of the people.

This writer is equally mistaken, when he says, the people are sure to be losers in the end. They can hardly be losers if unsuccessful; because, if they live, they can but be slaves, after an unfortunate effort, and slaves they would have been, if they had not resisted. So that nothing is lost. If they die, they cannot be said to lose, for death is better than slavery. If they succeed, their gains are immense. They preserve their liberties. The instances in antiquity which this writer alludes to are not mentioned, and therefore cannot be answered; but that in the country from whence we are derived, is the most unfortunate for his purpose that could have been chosen. No doubt he means, the resistance to Charles I. and the case of Cromwell. But the people of England, and the cause of liberty, truth, virtue, and humanity, gained infinite advantages by that resistance. In all human probability, liberty, civil and religious, not only in Eng-

land, but in all Europe, would have been lost. Charles would undoubtedly have established the Romish religion, and a despotism as wild as any in the world. And as England has been a principal bulwark, from that period to this, of civil liberty and the Protestant religion in all Europe, if Charles's schemes had succeeded, there is great reason to apprehend that the light of science would have been extinguished, and mankind drawn back to a state of darkness and misery like that which prevailed from the fourth to the fourteenth century. It is true, and to be lamented, that Cromwell did not establish a government as free as he might and ought; but his government was infinitely more glorious and happy to the people than Charles's. Did not the people gain by the resistance to James II.? Did not the Romans gain by the resistance to Tarquin? Without that resistance, and the liberty that was restored by it, would the great Roman orators, poets, and historians, the great teachers of humanity and politeness, the pride of human nature, and the delight and glory of mankind for seventeen hundred years, ever have existed? Did not the Romans gain by resistance to the Decemvirs? Did not the English gain by resistance to John, when *Magna Charta* was obtained? Did not the Seven United Provinces gain by resistance to Philip, Alva, and Granvelle? Did not the Swiss Cantons, the Genevans, and Grisons gain by resistance to Albert and Gessler?

NO. II.

I HAVE heretofore intimated my intention of pursuing the tories through all their dark intrigues and wicked machinations, and to show the rise and progress of their schemes for enslaving this country. The honor of inventing and contriving these measures is not their due. They have been but servile copiers of the designs of Andros, Randolph, Dudley, and other champions of their cause towards the close of the last century. These latter worthies accomplished but little; and their plans had been buried with them for a long course of years, until, in the administration of the late Governor Shirley, they were revived by the persons who are now principally concerned in carrying them into execution. Shirley was a crafty, busy, ambitious, intriguing,

enterprising man; and, having mounted, no matter by what means, to the chair of this province, he saw, in a young, growing country, vast prospects of ambition opening before his eyes, and conceived great designs of aggrandizing himself, his family, and his friends. Mr. Hutchinson and Mr. Oliver, the two famous letter-writers, were his principal ministers of state; Russell, Paxton, Ruggles, and a few others, were *subordinate* instruments. Among other schemes of this junto, one was to have a revenue in America, by authority of parliament.

In order to effect their purpose, it was necessary to concert measures with the other colonies. Dr. Franklin, who was known to be an active and very able man, and to have great influence in the province of Pennsylvania, was in Boston in the year 1754, and Mr. Shirley communicated to him the profound secret, —the great design of taxing the colonies by act of parliament. This sagacious gentleman, this eminent philosopher and distinguished patriot, to his lasting honor, sent the Governor an answer in writing, with the following remarks upon his scheme, remarks which would have discouraged any honest man from the pursuit. The remarks are these: —

"That the people always bear the burden best, when they have, or think they have, some *share* in the direction.

"That when public measures are generally distasteful to the people, the wheels of government must move more heavily.

"That excluding the people of America from all share in the choice of a grand council for their own defence, and taxing them in parliament, where they have no representative, would probably give extreme dissatisfaction.

"That there was no reason to doubt the willingness of the colonists to contribute for their own defence. That the people themselves, whose all was at stake, could better judge of the force necessary for their defence, and of the means for raising money for the purpose, than a British parliament at so great distance.

"That natives of America would be as likely to consult wisely and faithfully for the safety of their native country, as the governors sent from Britain, whose object is generally to make fortunes, and then return home, and who might therefore be expected to carry on the war against France, rather in a way by which themselves were likely to be gainers, than for the greatest advantage of the cause.

" That compelling the colonies to pay money for their own defence, without their consent, would show a suspicion of their loyalty, or of their regard for their country, or of their common sense, and would be treating them as conquered enemies, and not as free Britons, who hold it for their undoubted right, not to be taxed but by their own consent, given through their representatives.

" That parliamentary taxes, once laid on, are often continued, after the necessity for laying them on ceases; but that if the colonists were trusted to tax themselves, they would remove the burden from the people as soon as it should become unnecessary for them to bear it any longer.

" That if parliament is to tax the colonies, their assemblies of representatives may be dismissed as useless.

" That taxing the colonies in parliament for their own defence against the French, is not more just, than it would be to oblige the cinque-ports, and other parts of Britain, to maintain a force against France, and tax them for this purpose, without allowing them representatives in parliament.

" That the colonists have always been indirectly taxed by the mother country, (besides paying the taxes necessarily laid on by their own assemblies); inasmuch as they are obliged to purchase the manufactures of Britain, charged with innumerable heavy taxes, some of which manufactures they could make, and others could purchase cheaper at markets.

" That the colonists are besides taxed by the mother country, by being obliged to carry great part of their produce to Britain, and accept a lower price than they might have at other markets. The difference is a tax paid to Britain.

" That the whole wealth of the colonists centres at last in the mother country, which enables her to pay her taxes.

" That the colonies have, at the hazard of their lives and fortunes, extended the dominions and increased the commerce and riches of the mother country; that therefore the colonists do not deserve to be deprived of the native right of Britons, the right of being taxed only by representatives chosen by themselves.

" That an adequate representation in parliament would probably be acceptable to the colonists, and would best raise the views and interests of the whole empire." [1]

[1] See the letters to Governor Shirley. Sparks's *Works of B. Franklin*, vol. iii. pp. 56 – 68.

The last of these propositions seems not to have been well considered; because an adequate representation in parliament is totally impracticable; but the others have exhausted the subject.*

Whether the ministry at home, or the junto here, were discouraged by these masterly remarks, or by any other cause, the project of taxing the colonies was laid aside; Mr. Shirley was removed from this government, and Mr. Pownall was placed in his stead.

Mr. Pownall seems to have been a friend to liberty and to our constitution, and to have had an aversion to all plots against either; and, consequently, to have given his confidence to other persons than Hutchinson and Oliver, who, stung with envy against Mr. Pratt and others, who had the lead in affairs, set themselves, by propagating slanders against the Governor among the people, and especially among the clergy, to raise discontents, and make him uneasy in his seat. Pownall, averse to wrangling, and fond of the delights of England, solicited to be recalled, and after some time Mr. Bernard was removed from New Jersey to the chair of this province.

Bernard was the man for the purpose of the junto. Educated in the highest principles of monarchy; naturally daring and courageous; skilled enough in law and policy to do mischief, and avaricious to a most infamous degree; needy, at the same time, and having a numerous family to provide for, he was an instrument suitable in every respect, excepting one, for this junto to employ. The exception I mean was blunt frankness, very opposite to that cautious cunning, that deep dissimulation, to which they had, by long practice, disciplined themselves. However, they did not despair of teaching him this necessary artful quality by degrees, and the event showed that they were not wholly unsuccessful in their endeavors to do it.

While the war lasted, these simple provinces were of too much importance in the conduct of it, to be disgusted by any open attempt against their liberties. The junto, therefore, contented themselves with preparing their ground, by extending their connection and correspondencies in England, and by conciliating

* If any one should ask what authority or evidence I have of this anecdote, I refer to the second volume of the Political Disquisitions, pp. 276 – 9. A book which ought to be in the hands of every American who has learned to read.

the friendship of the crown-officers occasionally here, and insinuating their designs as necessary to be undertaken in some future favorable opportunity, for the good of the empire, as well as of the colonies.

The designs of Providence are inscrutable. It affords conjunctures, favorable for their designs, to bad men, as well as to good. The conclusion of the peace was the most critical opportunity for our junto that could have presented. A peace, founded on the destruction of that system of policy, the most glorious for the nation that ever was formed, and which was never equalled in the conduct of the English government, except in the interregnum, and perhaps in the reign of Elizabeth; which system, however, by its being abruptly broken off, and its chief conductor discarded before it was completed, proved unfortunate to the nation, by leaving it sinking in a bottomless gulf of debt, oppressed and borne down with taxes.

At this lucky time, when the British financier was driven out of his wits, for ways and means to supply the demands upon him, Bernard is employed by the junto, to suggest to him the project of taxing the colonies by act of parliament.

I do not advance this without evidence. I appeal to a publication made by Sir Francis Bernard himself, the last year, of his own Select Letters on the Trade and Government of America; and the Principles of Law and Polity applied to the American Colonies. I shall make use of this pamphlet[1] before I have done.

In the year 1764, Mr. Bernard transmitted home to different noblemen and gentlemen, four copies of his Principles of Law and Polity, with a preface, which proves incontestably, that the project of new-regulating the American Colonies was not first suggested to him by the ministry, but by him to them. The words of this preface are these: "The present expectation, that a new regulation of the American governments will soon take place, probably arises more from the opinion the public has of the abilities of the present ministry, than from any thing that has transpired from the cabinet. It cannot be supposed that their penetration can overlook the necessity of such a regulation, nor their public spirit fail to carry it into execution. But it may be a question, whether the present is a proper time for this

[1] Printed in London, in 1774.

work; more urgent business may stand before it; some preparatory steps may be required to precede it; but these will only serve to postpone. As we may expect that this reformation, like all others, will be opposed by powerful prejudices, it may not be amiss to reason with them at leisure, and endeavor to take off their force before they become opposed to government."

These are the words of that arch-enemy of North America, written in 1764, and then transmitted to four persons, with a desire that they might be communicated to others.

Upon these words, it is impossible not to observe: First, that the ministry had never signified to him any intention of new-regulating the colonies, and therefore, that it was he who most officiously and impertinently put them upon the pursuit of this *will-with-a-wisp*, which has led him and them into so much mire; secondly, the artful flattery with which he insinuates these projects into the minds of the ministry, as matters of absolute necessity, which their great penetration could not fail to discover, nor their great regard to the public omit; thirdly, the importunity with which he urges a speedy accomplishment of his pretended reformation of the governments; and, fourthly, his consciousness that these schemes would be opposed, although he affects to expect from powerful prejudices only, that opposition, which all Americans say, has been dictated by sound reason, true policy, and eternal justice. The last thing I shall take notice of is, the artful, yet most false and wicked insinuation, that such new regulations were then generally expected. This is so absolutely false, that, excepting Bernard himself, and his junto, scarcely anybody on this side the water had any suspicion of it,— insomuch that, if Bernard had made public, at that time, his preface and principles, as he sent them to the ministry, it is much to be doubted whether he could have lived in this country; certain it is, he would have had no friends in this province out of the junto.

The intention of the junto was, to procure a revenue to be raised in America by act of parliament. Nothing was further from their designs and wishes, than the drawing or sending this revenue into the exchequer in England, to be spent there in discharging the national debt, and lessening the burdens of the poor people there. They were more selfish. They chose to have the fingering of the money themselves. Their design was,

that the money should be applied, first, in a large salary to the governor. This would gratify Bernard's avarice; and then, it would render him and all other governors, not only independent of the people, but still more absolutely a slave to the will of the minister. They intended likewise a salary for the lieutenant-governor. This would appease in some degree the gnawings of Hutchinson's avidity, in which he was not a whit behind Bernard himself. In the next place, they intended a salary to the judges of the common law, as well as admiralty. And thus, the whole government, executive and judicial, was to be rendered wholly independent of the people, (and their representatives rendered useless, insignificant, and even burthensome,) and absolutely dependent upon, and under the direction of the will of the minister of state. They intended, further, to new-model the whole continent of North America; make an entire new division of it into distinct, though more extensive and less numerous colonies; to sweep away all the charters upon the continent with the destroying besom of an act of parliament; and reduce all the governments to the plan of the royal governments, with a nobility in each colony, not hereditary indeed at first, but for life. They did indeed flatter the ministry and people in England with distant hopes of a revenue from America, at some future period, to be appropriated to national uses there. But this was not to happen, in their minds, for some time. The governments must be new-modelled, new-regulated, reformed, first, and then the governments here would be able and willing to carry into execution any acts of parliament, or measures of the ministry, for fleecing the people here, to pay debts, or support pensioners on the American establishment, or bribe electors or members of parliament, or any other purpose that a virtuous ministry could desire.

But, as ill luck would have it, the British financier was as selfish as themselves, and, instead of raising money for them, chose to raise it for himself. He put the cart before the horse. He chose to get the revenue into the exchequer, because he had hungry cormorants enough about him in England, whose cawings were more troublesome to his ears than the croaking of the ravens in America. And he thought, if America could afford any revenue at all, and he could get it by authority of parliament, he might have it himself, to give to his friends, as well as

raise it for the junto here, to spend themselves, or give to theirs. This unfortunate, preposterous improvement, of Mr. Grenville, upon the plan of the junto, had wellnigh ruined the whole.

I will proceed no further without producing my evidence. Indeed, to a man who was acquainted with this junto, and had any opportunity to watch their motions, observe their language, and remark their countenances, for these last twelve years, no other evidence is necessary; it was plain to such persons what this junto were about. But we have evidence enough now, under their own hands, of the whole of what was said of them by their opposers through the whole period.

Governor Bernard, in his letter of July 11, 1764, says, "that a general reformation of the American governments would become not only a desirable but a necessary measure." What his idea was, of a general reformation of the American governments, is to be learned from his Principles of Law and Polity, which he sent to the ministry in 1764. I shall select a few of them in his own words; but I wish the whole of them could be printed in the newspapers, that America might know more generally the principles, and designs, and exertions of our junto.

His 29th proposition is: "The rule that a British subject shall not be bound by laws, or liable to taxes, but what he has consented to by his representatives, must be confined to the inhabitants of Great Britain only; and is not strictly true even there.

"30. The Parliament of Great Britain, as well from its rights of sovereignty, as from occasional exigencies, has a right to make laws for, and impose taxes upon, its subjects in its external dominions, although they are not represented in such Parliament. But,

"31. Taxes imposed upon the external dominions ought to be applied to the use of the people from whom they are raised.

"32. The Parliament of Great Britain has a right and a duty to take care to provide for the defence of the American colonies; especially as such colonies are unable to defend themselves.

"33. The Parliament of Great Britain has a right and a duty to take care that provision be made for a sufficient support of the American governments." Because,

"34. The support of the government is one of the principal conditions upon which a colony is allowed the power of legislation." Also, because,

"35. Some of the American colonies have shown themselves deficient in the support of their several governments, both as to sufficiency and independency."

His 75th proposition is: "Every American government is capable of having its constitution altered for the better.

"76. The grants of the powers of government to the American colonies, by charters, cannot be understood to be intended for other than their infant or growing states.

"77. They cannot be intended for their mature state, that is, for perpetuity; because they are in many things unconstitutional, and contrary to the very nature of a British government. Therefore,

"78. They must be considered as designed only as temporary means, for settling and bringing forward the peopling the colonies; which being effected, the cause of the peculiarity of their constitution ceases.

"79. If the charters can be pleaded against the authority of parliament, they amount to an alienation of the dominions of Great Britain, and are, in effect, acts of dismembering the British empire, and will operate as such, if care is not taken to prevent it.

"83. The notion which has heretofore prevailed, that the dividing America into many governments, and different modes of government, will be the means to prevent their uniting to revolt, is ill-founded; since, if the governments were ever so much consolidated, it will be necessary to have so many distinct states, as to make a union to revolt impracticable." Whereas,

"84. The splitting America into many small governments, weakens the governing power and strengthens that of the people; and thereby makes revolting more probable and more practicable.

"85. To prevent revolts in future times, (for there is no room to fear them in the present,) the most effectual means would be, to make the governments large and respectable, and balance the powers of them.

"86. There is no government in America at present, whose powers are properly balanced; there not being in any of them a

real and distinct third legislative power mediating between the king and the people, which is the peculiar excellence of the British constitution.

" 87. The want of such a third legislative power adds weight to the popular, and lightens the royal scale, so as to destroy the balance between the royal and popular powers.

" 88. Although America is not now, (and probably will not be for many years to come) ripe enough for a hereditary nobility, yet it is now capable of a nobility for life.

" 89. A nobility appointed by the king for life, and made independent, would probably give strength and stability to the American governments as effectually as a hereditary nobility does to that of Great Britain.

" 90. The reformation of the American governments should not be controlled by the present boundaries of the colonies, as they were mostly settled upon partial, occasional, and accidental considerations, without any regard to the whole.

" 91. To settle the American governments to the greatest possible advantage, it will be necessary to reduce the number of them; in some places to unite and consolidate; in others to separate and transfer; and in general to divide by natural boundaries instead of imaginary lines.

" 92. If there should be but one form of government established for all the North American provinces, it would greatly facilitate the reformation of them; since, if the mode of government was everywhere the same, people would be more indifferent under what division they were ranged.

" 93. No objections ought to arise to the alteration of the boundaries of provinces from proprietors, on account of their property only; since there is no occasion that it should in the least affect the boundaries of properties.

" 94. The present distinctions of one government being more free or more popular than another, tends to embarrass and to weaken the whole, and should not be allowed to subsist among people subject to one king and one law, and all equally fit for one form of government.

" 95. The American colonies, in general, are at this time arrived at that state, which qualifies them to receive the most perfect form of government which their situation and relation to Great Britain make them capable of.

"96. The people of North America, at this time, expect a revisal and reformation of the American governments, and are better disposed to submit to it than ever they were, or perhaps ever will be again.

"97. This is, therefore, the proper and critical time to reform the American governments, upon a general, constitutional, firm, and durable plan; and if it is not done now, it will probably every day grow more difficult, till at last it becomes impracticable."

My friends, these are the words, the plans, principles, and endeavors of Governor Bernard, in the year 1764. That Hutchinson and Oliver, notwithstanding all their disguises, which you well remember, were in unison with him in the whole of his measures, can be doubted by no man. It appeared sufficiently in the part they all along acted, notwithstanding their professions. And it appears incontestably from their detected letters; of which more hereafter.

Now, let me ask you, if the Parliament of Great Britain had all the natural foundations of authority, wisdom, goodness, justice, power, in as great perfection as they ever existed in any body of men since Adam's fall; and if the English nation was the most virtuous, pure, and free that ever was; would not such an unlimited subjection of three millions of people to that parliament, at three thousand miles distance, be real slavery? There are but two sorts of men in the world, freemen and slaves. The very definition of a freeman is one who is bound by no law to which he has not consented. Americans would have no way of giving or withholding their consent to the acts of this parliament, therefore they would not be freemen. But when luxury, effeminacy, and venality are arrived at such a shocking pitch in England; when both electors and elected are become one mass of corruption; when the nation is oppressed to death with debts and taxes, owing to their own extravagance and want of wisdom, what would be your condition under such an absolute subjection to parliament? You would not only be slaves, but the most abject sort of slaves, to the worst sort of masters! at least this is my opinion.

Judge you for yourselves between Massachusettensis and Novanglus.

NO. III.

The history of the tories, begun in my last, will be interrupted for some time; but it shall be resumed, and minutely related in some future papers. Massachusettensis, who shall now be pursued in his own serpentine path, in his first paper complains that the press is not free; that a party, by playing off the resentment of the populace against printers and authors, has gained the ascendency so far as to become the licenser of it; that the press is become an engine of oppression and licentiousness, much devoted to the partisans of liberty, who have been indulged in publishing what they pleased, *fas vel nefas*, while little has been published on the part of government.

The art of this writer, which appears in all his productions, is very conspicuous in this. It is intended to excite a resentment against the friends of liberty, for tyrannically depriving their antagonists of so important a branch of freedom; and a compassion towards the tories, in the breasts of the people, in the other colonies and in Great Britain, by insinuating that they have not had equal terms. But nothing can be more injurious, nothing farther from the truth. Let us take a retrospective view of the period since the last peace, and see whether they have not uniformly had the press at their service, without the least molestation to authors or printers. Indeed, I believe, that the Massachusetts Spy, if not the Boston Gazette, has been open to them as well as to others. The Evening Post, Massachusetts Gazette, and Boston Chronicle have certainly been always as free for their use as the air. Let us dismiss prejudice and passion, and examine impartially whether the tories have not been chargeable with at least as many libels, as much licentiousness of the press, as the whigs? Dr. Mayhew was a whig of the first magnitude, — a clergyman equalled by very few of any denomination in piety, virtue, genius, or learning, whose works will maintain his character as long as New England shall be free, integrity esteemed, or wit, spirit, humor, reason, and knowledge admired. How was he treated from the press? Did not the reverend tories, who were pleased to write against him, the missionaries of defamation, as well as bigotry and passive obedi-

ence, in their pamphlets and newspapers, bespatter him all over with their filth? Did they not, with equal falsehood and malice, charge him with every thing evil? Mr. Otis was in civil life, and a senator, whose parts, literature, eloquence, and integrity proved him a character in the world equal to any of the time in which he flourished of any party in the province. Now, be pleased to recollect the Evening Post. For a long course of years, that gentleman, his friends and connections, of whom the world has, and grateful posterity will have, a better opinion than Massachusettensis will acknowledge, were pelted with the most infernally malicious, false, and atrocious libels that ever issued from any press in Boston. I will mention no other names, lest I give too much offence to the modesty of some, and the envy and rancor of others.

There never was before, in any part of the world, a whole town insulted to their faces, as Boston was by the Boston Chronicle. Yet the printer was not molested for printing. It was his mad attack upon other printers with his clubs, and upon other gentlemen with his pistols, that was the cause, or rather the pretence, of his flight. The truth was, he became too polite to attend to his business; his shop was neglected; procurations were coming for more than two thousand pounds sterling, which he had no inclination to pay.

Printers may have been less eager after the productions of the tories than of the whigs, and the reason has been, because the latter have been more consonant to the general taste and sense, and consequently more in demand. Notwithstanding this, the former have ever found one press, at least, devoted to their service, and have used it as licentiously as they could wish. Whether the revenue-chest has kept it alive, and made it profitable against the general sense, or not, I wot not. Thus much is certain, that two, three, four, five, six, eight, fifteen hundred pounds sterling a-year, have been the constant reward of every scribbler who has taken up the pen on the side of the ministry with any reputation, and commissions have been given here for the most wretched productions of dulness itself; whereas, the writers on the side of liberty have been rewarded only with the consciousness of endeavoring to do good, with the approbation of the virtuous, and the malice of men in power.

But this is not the first time that writers have taken advan-

tage of the times. Massachusettensis knows the critical situation of this province; the danger it is in, without government or law; the army in Boston; the people irritated and exasperated in such a manner as was never before borne by any people under heaven. Much depends upon their patience at this critical time; and such an example of patience and order this people have exhibited, in a state of nature, under such cruel insults, distresses, and provocations, as the history of mankind cannot parallel. In this state of things, protected by an army, the whole junto are now pouring forth the torrents of their billingsgate; propagating thousands of the most palpable falsehoods, when they know that the writers on the other side have been restrained by their prudence and caution from engaging in a controversy that must excite heats, lest it should have unhappy and tragical consequences.

There is nothing in this world so excellent that it may not be abused. The abuses of the press are notorious. It is much to be desired, that writers on all sides would be more careful of truth and decency; but, upon the most impartial estimate, the tories will be found to have been the least so of any party among us.

The honest Veteran, who ought not to be forgotten in this place, says: "If an inhabitant of Bern or Amsterdam could read the newspapers, &c., he would be at a loss how to reconcile oppression with such unbounded license of the press, and would laugh at the charge, as something much more than a paradox, — as a palpable contradiction." But, with all his taste and manly spirit, the Veteran is little of a statesman. His ideas of liberty are quite inadequate; his notions of government very superficial. License of the press is no proof of liberty. When a people are corrupted, the press may be made an engine to complete their ruin; and it is now notorious, that the ministry are daily employing it, to increase and establish corruption, and to pluck up virtue by the roots. Liberty can no more exist without virtue and independence, than the body can live and move without a soul. When these are gone, and the popular branch of the constitution is become dependent on the minister, as it is in England, or cut off, as it is in America, all other forms of the constitution may remain; but if you look for liberty, you will grope in vain; and the freedom of the press, instead of promot-

ing the cause of liberty, will but hasten its destruction, as the best cordials taken by patients in some distempers become the most rancid and corrosive poisons.

The language of the Veteran, however, is like the style of the minister and his scribblers in England, — boasting of the unbounded freedom of the press, and assuring the people that all is safe while that continues; and thus the people are to be cheated with libels, in exchange for their liberties.

A stronger proof cannot be wished, of the scandalous license of the tory presses, than the swarms of pamphlets and speculations, in New York and Boston, since last October. "Madness, folly, delusion, delirium, infatuation, frenzy, high treason, and rebellion," are charged in every page, upon three millions of as good and loyal, as sensible and virtuous people as any in the empire; nay, upon that congress, which was as full and free a representative as ever was constituted by any people; chosen universally, without solicitation, or the least tincture of corruption; that congress which consisted of governors, counsellors, some of them by mandamus too, judges of supreme courts, speakers of assemblies, planters and merchants of the first fortune and character, and lawyers of the highest class, many of them educated at the temple, called to the bar in England, and of abilities and integrity equal to any there.

Massachusettensis, conscious that the people of this continent have the utmost abhorrence of treason and rebellion, labors to avail himself of the magic in these words. But his artifice is vain. The people are not to be intimidated by hard words from a necessary defence of their liberties. Their attachment to their constitution, so dearly purchased by their own and their ancestors' blood and treasure; their aversion to the late innovations; their horror of arbitrary power and the Romish religion, are much deeper rooted than their dread of rude sounds and unmannerly language. They do not want "the advice of an honest lawyer, if such an one could be found," nor will they be deceived by a dishonest one. They know what offence it is to assemble armed, and forcibly obstruct the course of justice. They have been many years considering and inquiring; they have been instructed by Massachusettensis and his friends, in the nature of treason, and the consequences of their own principles and actions. They know upon what hinge the whole dispute turns;

that the *fundamentals* of the government over them are disputed; that the minister pretends, and had the influence to obtain the voice of the last parliament in his favor, that parliament is the only supreme, sovereign, absolute, and uncontrollable legislative over all the colonies; that, therefore, the minister and all his advocates will call resistance to acts of parliament by the names of treason and rebellion. But, at the same time, they know that, in their own opinions, and in the opinions of all the colonies, parliament has no authority over them, excepting to regulate their trade, and this not by any principle of common law, but merely by the consent of the colonies, founded on the obvious necessity of a case which was never in contemplation of that law, nor provided for by it; that, therefore, they have as good a right to charge that minister, Massachusettensis, and the whole army to which he has fled for protection, with treason and rebellion. For, if the parliament has not a legal authority to overturn their constitution, and subject them to such acts as are lately passed, every man who accepts of any commission, and takes any steps to carry those acts into execution, is guilty of overt acts of treason and rebellion against his majesty, his royal crown and dignity, as much as if he should take arms against his troops, or attempt his sacred life. They know that the resistance against the Stamp Act, which was made through all America, was, in the opinion of Massachusettensis and George Grenville, high treason; and that Brigadier Ruggles and good Mr. Ogden pretended at the congress of New York to be of the same mind, and have been held in utter contempt and derision by the whole continent for the same reason ever since; because, in their own opinion, that resistance was a noble stand against tyranny, and the only opposition to it which could have been effectual; that if the American resistance to the act for destroying your charter, and to the resolves for arresting persons here and sending them to England for trial, is treason, the lords and commons, and the whole nation, were traitors at the revolution. They know that all America is united in sentiment, and in the plan of opposition to the claims of administration and parliament. The junto, in Boston, with their little flocks of adherents in the country, are not worth taking into the account; and the army and navy, though these are divided among themselves, are no part of America.

In order to judge of this union, they begin at the commencement of the dispute, and run through the whole course of it. At the time of the Stamp Act, every colony expressed its sentiments by resolves of their assemblies, and every one agreed that parliament had no right to tax the colonies. The house of representatives of the Massachusetts Bay then consisted of many persons who have since figured as friends to government; yet every member of that house concurred most cheerfully in the resolves then passed. The congress which met that year at New York expressed the same opinion in their resolves, after the paint, paper, and tea act was passed. The several assemblies expressed the same sentiments; and when your colony wrote the famous circular letter, notwithstanding all the mandates and threats and cajoling of the minister and the several governors, and all the crown-officers through the continent, the assemblies, with one voice, echoed their entire approbation of that letter, and their applause to your colony for sending it. In the year 1768, when a non-importation was suggested and planned by a few gentlemen at a private club in one of our large towns, as soon as it was proposed to the public, did it not spread through the whole continent? Was it not regarded like the laws of the Medes and Persians in almost all the colonies? When the paint and paper act was repealed, the southern colonies agreed to depart from the association in all things but the dutied articles; but they have kept strictly to their agreement against importing them, so that no tea worth the mentioning has been imported into any of them from Great Britain to this day. In the year 1770, when a number of persons were slaughtered in King Street, such was the brotherly sympathy of all the colonies, such their resentment against a hostile administration, that the innocent blood then spilt has never been forgotten, nor the murderous minister and governors, who brought the troops here, forgiven by any part of the continent, and never will be. When a certain masterly statesman [1] invented a committee of correspondence in Boston, which has provoked so much of the spleen of Massachusettensis, (of which much more hereafter) did not every colony, nay, every county, city, hundred, and town, upon the whole continent, adopt the measure, I had almost said,

[1] Samuel Adams.

as if it had been a revelation from above, as the happiest means of cementing the union and acting in concert?

What proofs of union have been given since the last March? Look over the resolves of the several colonies, and you will see that one understanding governs, one heart animates the whole body. Assemblies, conventions, congresses, towns, cities, and private clubs and circles, have been actuated by one great, wise, active, and noble spirit, one masterly soul animating one vigorous body. The congress at Philadelphia have expressed the same sentiments with the people of New England; approved of the opposition to the late innovations; unanimously advised us to persevere in it; and assured us, that if force is attempted to carry these measures against us, all America ought to support us. Maryland and the lower counties on Delaware have already, to show to all the world their approbation of the measures of New England and their determination to join in them, with a generosity, a wisdom, and magnanimity which ought to make the tories consider, taken the power of the militia into the hands of the people, without the governor or minister, and established it by their own authority, for the defence of Massachusetts, as well as of themselves. Other colonies are only waiting to see if the necessity of it will become more obvious. Virginia and the Carolinas are preparing for military defence, and have been for some time. When we consider the variety of climate, soil, religion, civil government, commercial interests, &c. which were represented at the congress, and the various occupations, education, and characters of the gentlemen who composed it, the harmony and unanimity which prevailed in it can scarcely be paralleled in any assembly that ever met. When we consider that, at the revolution, such mighty questions, as whether the throne was vacant or not, and whether the Prince of Orange should be king or not, were determined in the convention of parliament by small majorities of two or three, and four or five only, the great majorities, the almost unanimity with which all great questions have been decided in your house of representatives and other assemblies, and especially in the continental congress, cannot be considered in any other light than as the happiest omens, indeed as providential dispensations, in our favor, as well as the clearest demonstrations of the cordial, firm, radical, and indissoluble union of the colonies.

The grand aphorism of the policy of the whigs has been to unite the people of America, and divide those of Great Britain. The reverse of this has been the maxim of the tories, namely,— to unite the people of Great Britain, and divide those of America. All the movements, marches, and countermarches of both parties, on both sides of the Atlantic, may be reduced to one or the other of these rules. I have shown, in opposition to Massachusettensis, that the people of America are united more perfectly than the most sanguine whig could ever have hoped, or than the most timid tory could have feared. Let us now examine whether the people of Great Britain are equally united against us. For, if the contending countries were equally united, the prospect of success in the quarrel would depend upon the comparative wisdom, firmness, strength, and other advantages of each. And if such a comparison was made, it would not appear to a demonstration that Great Britain could so easily subdue and conquer. It is not so easy a thing for the most powerful state to conquer a country a thousand leagues off. How many years time, how many millions of money, did it take, with five-and-thirty thousand men, to conquer the poor province of Canada? And, after all the battles and victories, it never would have submitted, without a capitulation which secured to them their religion and properties.

But we know that the people of Great Britain are not united against us. We distinguish between the ministry, the house of commons, the officers of the army, navy, excise, customs, &c., who are dependent on the ministry, and tempted, if not obliged, to echo their voices, and the body of the people. We are assured, by thousands of letters from persons of good intelligence, by the general strain of publications in public papers, pamphlets, and magazines, and by some larger works written for posterity, that the body of the people are friends to America, and wish us success in our struggles against the claims of parliament and administration. We know, that millions in England and Scotland will think it unrighteous, impolitic, and ruinous to make war upon us; and a minister, though he may have a marble heart, will proceed with a diffident, desponding spirit. We know that London and Bristol, the two greatest commercial cities in the empire, have declared themselves, in the most decisive manner, in favor of our cause,— so explicitly, that the former has

bound her members under their hands to assist us; and the latter has chosen two known friends of America, one attached to us by principle, birth, and the most ardent affection,[1] the other an able advocate for us on several great occasions.[2] We know that many of the most virtuous and independent of the nobility and gentry are for us, and among them, the best bishop that adorns the bench,[3] as great a judge as the nation can boast,[4] and the greatest statesman it ever saw.[5] We know that the nation is loaded with debts and taxes, by the folly and iniquity of its ministers, and that, without the trade of America, it can neither long support its fleet and army, nor pay the interest of its debt.

But we are told that the nation is now united against us; that they hold they have a right to tax us and legislate for us, as firmly as we deny it; that we are a part of the British empire; that every state must have an uncontrollable power coextensive with the empire; that there is little probability of serving ourselves by ingenious distinctions between external and internal taxes; that if we are not a part of the state, and subject to the supreme authority of parliament, Great Britain will make us so; that if this opportunity of reclaiming the colonies is lost, they will be dismembered from the empire; and, although they may continue their allegiance to the king, they will own none to the imperial crown.

To all this I answer, that the nation is not so united; that they do not so universally hold they have such a right. And my reasons I have given before; that the terms "British Empire" are not the language of the common law, but the language of newspapers and political pamphlets; that the dominions of the king of Great Britain have no power coextensive with them. I would ask, by what law the parliament has authority over America? By the law of God, in the Old and New Testament, it has none; by the law of nature and nations, it has none; by the common law of England, it has none, for the common law, and the authority of parliament founded on it, never extended beyond the four seas; by statute law it has none, for no statute was made before the settlement of the colonies for this purpose; and the declaratory act, made in 1766, was made without our

[1] Mr. Cruger, a native of New York, better known as he who said "ditto" to Mr. Burke. [2] Edmund Burke. [3] Dr. Shipley, Bishop of St. Asaph. [4] Lord Camden. [5] Lord Chatham.

consent, by a parliament which had no authority beyond the four seas. What religious, moral, or political obligations then are we under to submit to parliament as a supreme legislative? None at all. When it is said, that if we are not subject to the supreme authority of parliament, Great Britain will make us so, all other laws and obligations are given up, and recourse is had to the *ratio ultima* of Louis XIV. and the *suprema lex* of the king of Sardinia, — to the law of brickbats and cannon balls, which can be answered only by brickbats and balls.

This language, "the imperial crown of Great Britain," is not the style of the common law, but of court sycophants. It was introduced in allusion to the Roman empire, and intended to insinuate that the prerogative of the imperial crown of England was like that of the Roman emperor, after the maxim was established, *quod principi placuit legis habet vigorem;* and, so far from including the two houses of parliament in the idea of this imperial crown, it was intended to insinuate that the crown was absolute, and had no need of lords or commons to make or dispense with laws. Yet even these court sycophants, when driven to an explanation, never dared to put any other sense upon the words *imperial crown* than this, that the crown of England was independent of France, Spain, and all other kings and states in the world.

When he says, that the king's dominions must have an uncontrollable power coextensive with them, I ask whether they have such a power or not? and utterly deny that they have, by any law but that of Louis XIV. and the king of Sardinia. If they have not, and it is necessary that they should have, it then follows that there is a defect in what he calls the British empire; and how shall this defect be supplied? It cannot be supplied consistently with reason, justice, policy, morality, or humanity, without the consent of the colonies and some new plan of connection. But if Great Britain will set all these at defiance, and resort to the *ratio ultima*, all Europe will pronounce her a tyrant, and America never will submit to her, be the danger of disobedience as great as it will.

But there is no need of any other power than that of regulating trade, and this the colonies ever have been, and will be, ready and willing to concede to her. But she will never obtain from America any further concession while she exists. We are

then asked, "for what she protected and defended the colonies against the maritime powers of Europe, from their first settlement to this day?" I answer, for her own interest; because all the profits of our trade centred in her lap. But it ought to be remembered, that her name, not her purse, nor her fleets and armies ever protected us, until the last war, and then the minister who conducted that war informed us that the annual millions from America enabled her to do it.

We are then asked, for what she purchased New York of the Dutch? I answer, she never did. The Dutch never owned it, were never more than trespassers and intruders there, and were finally expelled by conquest. It was ceded, it is true, by the treaty of Breda, and it is said in some authors, that some other territory in India was ceded to the Dutch in lieu of it. But this was the transaction of the king, not of parliament, and therefore makes nothing to the argument.

But admitting, for argument sake, (since the cautious Massachusettensis will urge us into the discussion of such questions,) what is not a supposable case, that the nation should be so sunk in sloth, luxury, and corruption, as to suffer their minister to persevere in his mad blunders, and send fire and sword against us, how shall we defend ourselves? The colonies south of Pennsylvania have no men to spare, we are told. But we know better; we know that all those colonies have a back country, which is inhabited by a hardy, robust people, many of whom are emigrants from New England, and habituated, like multitudes of New England men, to carry their fuzees or rifles upon one shoulder, to defend themselves against the Indians, while they carry their axes, scythes, and hoes upon the other, to till the ground. Did not those colonies furnish men the last war, excepting Maryland? Did not Virginia furnish men, one regiment particularly, equal to any regular regiment in the service? Does the soft Massachusettensis imagine, that in the unnatural, horrid war he is now supposing, their exertions would be less? If he does, he is very ill informed of their principles, their present sentiments and temper.

But, "have you arms and ammunition?" I answer, we have; but if we had not, we could make a sufficient quantity of both. What should hinder? We have many manufacturers of fire-arms now, whose arms are as good as any in the world. Powder

has been made here, and may be again, and so may saltpetre. What should hinder? We have all the materials in great abundance, and the process is very simple. But if we neither had them nor could make them, we could import them.

But "the British navy!" ay, there 's the rub. Let us consider, since the prudent Massachusettensis will have these questions debated, how many ships are taken to blockade Boston harbor! How many ships can Britain spare to carry on this humane and political war, the object of which is a pepper-corn! Let her send all the ships she has round her island; what if her ill-natured neighbors, France and Spain, should strike a blow in their absence? In order to judge what they could all do when they arrived here, we should consider what they are all able to do round the island of Great Britain. We know that the utmost vigilance and exertions of them, added to all the terrors of sanguinary laws, are not sufficient to prevent continual smuggling into their own island. Are there not fifty bays, harbors, creeks, and inlets upon the whole coast of North America, where there is one round the island of Great Britain? Is it to be supposed, then, that the whole British navy could prevent the importation of arms and ammunition into America, if she should have occasion for them to defend herself against the hellish warfare that is here supposed?

But what will you do for discipline and subordination? I answer, We will have them in as great perfection as the regular troops. If the provincials were not brought, in the last war, to a proper discipline, what was the reason? Because regular generals would not let them fight, which they ardently wished, but employed them in cutting roads. If they had been allowed to fight, they would have brought the war to a conclusion too soon. The provincials did submit to martial law, and to the mutiny and desertion act the last war, and such an act may be made here by a legislature which they will obey with much more alacrity than an act of parliament.

"The new-fangled militia," as the specious Massachusettensis calls it, is such a militia as he never saw.[1] They are commanded

[1] "We all know, notwithstanding the province law for regulating the militia, it was under little more command than what the officers could obtain from treating and humoring the common soldiers; what, then, can be expected from such an army as you will bring into the field, if you bring any, — each one a

through the province, not by men who procured their commissions from a governor as a reward for making themselves pimps to his tools, and by discovering a hatred of the people, but by gentlemen, whose estates, abilities, and benevolence have rendered them the delight of the soldiers; and there is an esteem and respect for them visible through the province, which has not been used in the militia. Nor is there that unsteadiness that is charged upon them. In some places, where companies have been split into two or three, it has only served, by exciting an emulation between the companies, to increase the martial spirit and skill. The plausible Massachusettensis may write as he will, but, in a land war, this continent might defend itself against all the world. We have men enough, and those men have as good natural understandings, and as much natural courage as any other men. If they were wholly ignorant now, they might learn the art of war.

But at sea we are defenceless.[1] A navy might burn our seaport towns. What then? If the insinuating Massachusettensis has ever read any speculations concerning an agrarian law, and I know he has, he will be satisfied that three hundred and fifty thousand landholders will not give up their rights, and the constitution by which they hold them, to save fifty thousand inhabitants of maritime towns. Will the minister be nearer his mark, after he has burned a beautiful town and murdered thirty thousand innocent people? So far from it, that one such event would occasion the loss of all the colonies to Great Britain forever. It is not so clear that our trade, fishery, and navigation could be taken from us. Some persons, who understand this subject better than Massachusettensis, with all his sprightly imaginations, are of a different opinion. They think that our trade

politician, puffed up with his own opinion, and feeling himself second to none? Can any of you command ten thousand such men? Can you punish the disobedient? Can all your wisdom direct their strength, courage, or activity to any given point? Would not the least disappointment or unfavorable aspect cause a general dereliction of the service? Your new-fangled militia have already given us a specimen of their future conduct. In some of their companies, they have already chosen two, in others, three sets of officers, and are as dissatisfied with the last choice as the first." *Massachusettensis*, 12 December.

[1] "I have hitherto confined my observations to the war within the interior parts of the colonies. Let us now turn our eyes to our extensive sea-coast, and that we find wholly at the mercy of Great Britain; our trade, fishery, navigation, and maritime towns taken from us the very day that war is proclaimed." *Massachusettensis.*

would be increased. But I will not enlarge upon this subject, because I wish the trade of this continent may be confined to Great Britain, at least as much of it as it can do her any good to restrain.

The Canadians and savages are brought in to thicken the horrors of a picture with which the lively fancy of this writer has terrified him.[1] But, although we are sensible that the Quebec act has laid a foundation for a fabric, which, if not seasonably demolished, may be formidable, if not ruinous, to the colonies, in future times, yet we know that these times are yet at a distance; at present we hold the power of the Canadians as nothing. But we know their dispositions are not unfriendly to us.

The savages will be more likely to be our friends than enemies; but if they should not, we know well enough how to defend ourselves against them.

I ought to apologize for the immoderate length of this paper; but general assertions are only to be confuted by an examination of particulars, which necessarily fills up much space. I will trespass on the reader's patience only while I make one observation more upon the art, I had almost said chicanery, of this writer.

He affirms that we are not united in this province, and that associations are forming in several parts of the province. The association he means has been laid before the public, and a very curious piece of legerdemain it is. Is there any article acknowledging the authority of parliament, the unlimited authority of parliament? Brigadier Ruggles himself, Massachusettensis himself, could not have signed it if there had been, consistent with their known declared opinions. They associate to stand by the king's laws, and this every whig will subscribe. But, after all, what a wretched fortune has this association made in the world! The numbers who have signed it would appear so inconsiderable,

[1] "Inconceivably shocking the scene! if we turn our views to the wilderness, — our back settlements a prey to our ancient enemy, the Canadians, whose wounds, received from us in the late war, will bleed afresh at the prospect of revenge, and to the numerous tribes of savages, whose tender mercies are cruelties. Thus, with the British navy in the front, Canadians and savages in the rear, a regular army in the midst, we must be certain, that whenever the sword of civil war is unsheathed, devastation will pass through our land like a whirlwind; our houses be burnt to ashes; our fair possessions laid waste; and he that falls by the sword will be happy in escaping a more ignominious death."

Massachusettensis.

that I dare say the Brigadier will never publish to the world their numbers or names. But, "has not Great Britain been a nursing-mother to us?" Yes, and we have behaved as nurse-children commonly do, — been very fond of her, and rewarded her all along tenfold for all her care and expense in our nurture.

But "is not our distraction owing to parliament's taking off a shilling-duty on tea and imposing threepence, and is not this a more unaccountable frenzy, more disgraceful to the annals of America, than the witchcraft?"

Is the threepence upon tea our only grievance? Are we not in this province deprived of the privilege of paying our governors, judges, &c.? Are not trials by jury taken from us? Are we not sent to England for trial? Is not a military government put over us? Is not our constitution demolished to the foundation? Have not the ministry shown, by the Quebec bill, that we have no security against them for our religion, any more than our property, if we once submit to the unlimited claims of parliament? This is so gross an attempt to impose on the most ignorant of the people, that it is a shame to answer it.

Obsta principiis, nip the shoots of arbitrary power in the bud, is the only maxim which can ever preserve the liberties of any people. When the people give way, their deceivers, betrayers, and destroyers press upon them so fast, that there is no resisting afterwards. The nature of the encroachment upon the American constitution is such, as to grow every day more and more encroaching. Like a cancer, it eats faster and faster every hour. The revenue creates pensioners, and the pensioners urge for more revenue. The people grow less steady, spirited, and virtuous, the seekers more numerous and more corrupt, and every day increases the circles of their dependents and expectants, until virtue, integrity, public spirit, simplicity, and frugality, become the objects of ridicule and scorn, and vanity, luxury, foppery, selfishness, meanness, and downright venality swallow up the whole society.

NO. IV.

Massachusettensis, whose pen can wheedle with the tongue of King Richard III., in his first paper, threatens you with the vengeance of Great Britain; and assures you, that if she had no

authority over you, yet she would support her claims by her fleets and armies, Canadians and Indians. In his next, he alters his tone, and soothes you with the generosity, justice, and humanity of the nation.

I shall leave him to show how a nation can claim an authority which they have not by right, and support it by fire and sword, and yet be generous and just. The nation, I believe, is not vindictive, but the minister has discovered himself to be so in a degree that would disgrace a warrior of a savage tribe.

The wily Massachusettensis thinks our present calamity is to be attributed to the bad policy of a popular party, whose measures, whatever their intentions were, have been opposite to their profession, the public good. The present calamity seems to be nothing more nor less than reviving the plans of Mr. Bernard and the junto, and Mr. Grenville and his friends, in 1764. Surely this party are, and have been, rather unpopular. The popular party did not write Bernard's letters, who so long ago pressed for the demolition of all the charters upon the continent, and a parliamentary taxation to support government and the administration of justice in America. The popular party did not write Oliver's letters, who enforces Bernard's plans; nor Hutchinson's, who pleads with all his eloquence and pathos for parliamentary penalties, ministerial vengeance, and an abridgment of English liberties.

There is not in human nature a more wonderful phenomenon, nor in the whole theory of it a more intricate speculation, than the *shiftings*, *turnings*, *windings*, and *evasions* of a guilty conscience. Such is our unalterable moral constitution, that an internal inclination to do wrong is criminal; and a wicked thought stains the mind with guilt, and makes it tingle with pain. Hence it comes to pass, that the guilty mind can never bear to think that its guilt is known to God or man, no, nor to itself.

——— "Cur tamen hos tu
Evasisse putes, quos diri conscia facti
Mens habet attonitos, et surdo verbere cædit
Occultum quatiente animo tortore flagellum?
Pœna autem vehemens ac multo sævior illis,
Quas et Cæditius gravis invenit aut Rhadamanthus,
Nocte dieque suum gestare in pectore testem." *

* Juv. Sat. xiii. 192.

Massachusettensis and his friends the tories are startled at the calamities they have brought upon their country; and their conscious guilt, their smarting, wounded mind, will not suffer them to confess, even to themselves, what they have done. Their silly denials of their own share in it, before a people who, they know, have abundant evidence against them, never fail to remind me of an ancient *fugitive*, whose conscience could not bear the recollection of what he had done. "I know not; am I my brother's keeper?" he replies, with all the apparent simplicity of truth and innocence, to one from whom he was very sensible his guilt could not be hid. The still more absurd and ridiculous attempts of the tories, to throw off the blame of these calamities from themselves to the whigs, remind me of another story, which I have read in the Old Testament. When Joseph's brethren had sold him to the Ishmaelites for twenty pieces of silver, in order to conceal their own avarice, malice, and envy, they dip the coat of many colors in the blood of a kid, and say that an evil beast had rent him in pieces and devoured him. However, what the sons of Israel intended for ruin to Joseph, proved the salvation of the family; and I hope and believe that the whigs will have the magnanimity, like him, to suppress their resentment, and the felicity of saving their ungrateful brothers.

This writer has a faculty of insinuating errors into the mind almost imperceptibly, he dresses them so in the guise of truth. He says, that "the revenue to the crown from America amounted to but little more than the charges of collecting it," at the close of the last war. I believe it did not to so much. The truth is, there never was a pretence of raising a revenue in America before that time, and when the claim was first set up, it gave an alarm like a warlike expedition against us. True it is, that some duties had been laid before by parliament, under pretence of regulating our trade, and, by a collusion and combination between the West India planters and the North American governors, some years before, duties had been laid upon molasses, &c. under the same pretence; but, in reality, merely to advance the value of the estates of the planters in the West India Islands, and to put some plunder, under the name of thirds of seizures, into the pockets of the governors. But these duties, though more had been collected in this province than in any other, in proportion, were never regularly collected in any of the colonies.

So that the idea of an American revenue, for one purpose or another, had never, at this time, been formed in American minds.

Our writer goes on: "She (Great Britain) thought it as reasonable that the colonies should bear a part of the national burden, as that they should share in the national benefit."

Upon this subject Americans have a great deal to say. The national debt, before the last war, was near a hundred millions. Surely America had no share in running into that debt. What is the reason, then, that she should pay it? But a small part of the sixty millions spent in the last war was for her benefit. Did she not bear her full share of the burden of the last war in America? Did not the province pay twelve shillings in the pound in taxes for the support of it; and send a sixth or seventh part of her sons into actual service? And, at the conclusion of the war, was she not left half a million sterling in debt? Did not all the rest of New England exert itself in proportion? What is the reason that the Massachusetts has paid its debt, and the British minister, in thirteen years of peace, has paid none of his? Much of it might have been paid in this time, had not such extravagance and speculation prevailed, as ought to be an eternal warning to America, never to trust such a minister with her money. What is the reason that the great and necessary virtues of simplicity, frugality, and economy cannot live in England, Scotland, and Ireland, as well as America?

We have much more to say still. Great Britain has confined all our trade to herself. We are willing she should, so far as it can be for the good of the empire. But we say, that we ought to be allowed as credit, in the account of public burdens and expenses, so much, paid in taxes, as we are obliged to sell our commodities to her cheaper than we could get for them at foreign markets. The difference is really a tax upon us for the good of the empire. We are obliged to take from Great Britain commodities that we could purchase cheaper elsewhere. This difference is a tax upon us for the good of the empire. We submit to this cheerfully; but insist that we ought to have credit for it in the account of the expenses of the empire, because it is really a tax upon us.

Another thing; I will venture a bold assertion, — let Massachusettensis or any other friend of the minister confute me, — the three million Americans, by the tax aforesaid, upon what they

are obliged to export to Great Britain only, what they are obliged to import from Great Britain only, and the quantities of British manufactures which, in these climates, they are obliged to consume more than the like number of people in any part of the three kingdoms, ultimately pay more of the taxes and duties that are apparently paid in Great Britain, than any three million subjects in the three kingdoms. All this may be computed and reduced to stubborn figures by the minister, if he pleases. We cannot do it; we have not the accounts, records, &c. Now let this account be fairly stated, and I will engage for America, upon any penalty, that she will pay the overplus, if any, in her own constitutional way, provided it is to be applied for national purposes, as paying off the national debt, maintaining the fleet, &c., not to the support of a standing army in time of peace, placemen, pensioners, &c.

Besides, every farthing of expense which has been incurred, on pretence of protecting, defending, and securing America, since the last war, has been worse than thrown away; it has been applied to do mischief. Keeping an army in America has been nothing but a public nuisance.

Furthermore, we see that all the public money that is raised here, and have reason to believe all that will or can be raised, will be applied, not for public purposes, national or provincial, but merely to corrupt the sons of America, and create a faction to destroy its interest and happiness.

There are scarcely three sentences together, in all the voluminous productions of this plausible writer, which do not convey some error in fact or principle, tinged with a coloring to make it pass for truth. He says, "the idea that the stamps were a tax, not only exceeding our proportion, but beyond our utmost ability to pay, united the colonies generally in opposing it." That we thought it beyond our proportion and ability is true; but it was not this thought which united the colonies in opposing it. When he says that at first, we did not dream of denying the authority of parliament to tax us, much less to legislate for us, he discovers plainly either a total inattention to the sentiments of America, at that time, or a disregard of what he affirms.

The truth is, the authority of parliament was never generally acknowledged in America. More than a century since, Massa-

chusetts and Virginia both protested against even the act of navigation, and refused obedience, for this very reason, because they were not represented in parliament and were therefore not bound; and afterwards confirmed it by their own provincial authority. And from that time to this, the general sense of the colonies has been, that the authority of parliament was confined to the regulation of trade, and did not extend to taxation or internal legislation.

In the year 1764, your house of representatives sent home a petition to the king against the plan of taxing them. Mr. Hutchinson, Oliver, and their relations and connections were then in the legislature, and had great influence there. It was by their influence that the two houses were induced to wave the word *rights* and an express denial of the right of parliament to tax us, to the great grief and distress of the friends of liberty in both houses. Mr. Otis and Mr. Thacher labored in the committee to obtain an express denial. Mr. Hutchinson expressly said, he agreed with them in opinion, that parliament had no right, but thought it ill policy to express this opinion in the petition. In truth, I will be bold to say, there was not any member of either house who thought that parliament had such a right at that time. The house of representatives, at that time, gave their approbation to Mr. Otis's Rights of the Colonies, in which it was shown to be inconsistent with the right of British subjects to be taxed but by their own representatives.

In 1765, our house expressly resolved against the right of parliament to tax us. The congress at New York resolved:

"3. That it is inseparably essential to the freedom of a people, and the undoubted right of Englishmen, that no tax be imposed on them, but with their own consent, given personally, or by their representatives.

"4. That the people of the colonies are not, and from their local circumstances cannot, be represented in the house of commons of Great Britain.

"5. That the only representatives of the people of the colonies are the persons chosen therein by themselves; and that no taxes ever have been, or can be constitutionally imposed on them, but by their respective legislatures."

Is it not a striking disregard to truth, in the artful Massachusettensis, to say, that, at first, we did not dream of denying the

right of parliament to tax us? It was the principle that united the colonies to oppose it, not the *quantum* of the tax. Did not Dr. Franklin deny the right in 1754, in his remarks upon Governor Shirley's scheme, and suppose that all America would deny it? We had considered ourselves as connected with Great Britain, but we never thought parliament the supreme legislature over us. We never generally supposed it to have any authority over us, but from necessity, and that necessity we thought confined to the regulation of trade, and to such matters as concerned all the colonies together. We never allowed them any authority in our internal concerns.

This writer says, "acts of parliament for regulating our internal polity were familiar."[1] This I deny. So far otherwise, that the Hatter's Act was never regarded; the act to destroy the Land Bank scheme raised a greater ferment in this province than the Stamp Act did, which was appeased only by passing province laws directly in opposition to it. The act against slitting-mills and tilt-hammers never was executed here. As to the postage, it was so useful a regulation, so few persons paid it, and they found such a benefit by it, that little opposition was made to it. Yet every man who thought about it, called it a usurpation. Duties for regulating trade we paid, because we thought it just and necessary that they should regulate the trade which their power protected. As for duties for a revenue, none were ever laid by parliament for that purpose, until 1764, when, and ever since, its authority to do it has been constantly denied. Nor is this complaisant writer near the truth when he says, "We knew that in all those acts of government, the good of the whole had been consulted." On the contrary, we know that the private interest of provincial governors and West India planters had been consulted in the duties on foreign molasses, &c., and the private interest of a few Portugal merchants, in obliging us to touch at Falmouth with fruit, &c., in opposition to the good of the whole, and in many other instances.

[1] "We had paid postage, agreeable to act of parliament, for establishing a post-office, duties imposed for regulating trade, and even for raising a revenue to the crown, without questioning the right, though we closely adverted to the rate or *quantum*. We knew that in all those acts of government the good of the whole had been consulted; and whenever, through want of information, any thing grievous had been ordained, we were sure of obtaining redress by a proper representation of it." *Massachusettensis.*

The resolves of the house of burgesses of Virginia upon the Stamp Act did great honor to that province, and to the eminent patriot, Patrick Henry, who composed them.[1] But these resolves made no alteration in the opinion of the colonies, concerning the right of parliament to make that act. They expressed the universal opinion of the continent at that time; and the alacrity with which every other colony, and the congress at New York, adopted the same sentiment in similar resolves, proves the entire union of the colonies in it, and their universal determination to avow and support it. What follows here, — that it became so popular, that his life was in danger who suggested the contrary, and that the press was "open to one side only," — are direct misrepresentations and wicked calumnies.

Then we are told by this sincere writer, that when we obtained a partial repeal of the statute imposing duties on glass, paper, and teas, "this was the lucky moment when to have closed the dispute." What? with a board of commissioners remaining, the sole end of whose creation was to form and conduct a revenue? With an act of parliament remaining, the professed design of which, expressed in the preamble, was to raise a revenue, and appropriate it to the payment of governors' and judges' salaries; the duty remaining, too, upon an article which must raise a large sum, the consumption of which would constantly increase? Was this a time to retreat? Let me ask this sincere writer a simple question, — does he seriously believe that the designs of imposing other taxes, and of new-modelling our governments, would have been laid aside by the ministry or by the servants of the crown here? Does he think that Mr. Bernard, Mr. Hutchinson, the commissioners, and others would have been content then to have desisted? If he really thinks so, he knows little of the human heart, and still less of those gentlemen's

[1] "Some few months after it was known that the Stamp Act was passed, some resolves of the house of burgesses in Virginia, denying the right of parliament to tax the colonies, made their appearance. We read them with wonder; they savored of independence; they flattered the human passions; the reasoning was specious; we wished it conclusive. The transition to believing it so was easy; and we, almost all America, followed their example, in resolving that the parliament had no such right. It now became unpopular to suggest the contrary. His life would be in danger that asserted it. The newspapers were open to but one side of the question; and the inflammatory pieces that issued weekly from the press, worked up the populace to a fit temper to commit the outrages that ensued." *Massachusettensis.*

hearts. It was at this very time that the salary was given to the governor, and an order solicited for that to the judges.

Then we are entertained with a great deal of ingenious talk about whigs and tories, and at last are told, that some of the whigs owed all their importance to popularity.[1] And what then? Did not as many of the tories owe their importance to popularity? And did not many more owe all their importance to unpopularity? If it had not been for their taking an active part on the side of the ministry, would not some of the most conspicuous and eminent of them have been unimportant enough? Indeed, through the two last administrations, to despise and hate the people, and to be despised and hated by them, were the principal recommendations to the favors of government, and all the qualification that was required.

"The tories," says he, "were for closing the controversy." That is, they were for contending no more; and it was equally true, that they never were for contending at all, but lying at mercy. It was the very end they had aimed at from the beginning. They had now got the governor's salary out of the revenue, a number of pensions and places; they knew they could at any time get the judges' salaries from the same fountain; and they wanted to get the people reconciled and familiarized to this, before they went upon any new projects.

"The whigs were averse to restoring government; they even refused to revive a temporary Riot Act which expired about this time." Government had as much vigor then as ever, excepting only in those cases which affected this dispute. The Riot Act expired in 1770, immediately after the massacre in King Street. It was not revived, and never will be in this colony; nor will any one ever be made in any other, while a standing army is illegally posted here to butcher the people, whenever a governor or a magistrate, who may be a tool, shall order it. "Perhaps the whigs thought that mobs were a necessary ingredient in their

[1] "There were two parties in this province of pretty long standing, known by the name of whig and tory, which at this time were not a little embittered against each other. Men of abilities and acknowledged probity were on both sides. If the tories were suspected of pursuing their private interest through the medium of court favor, there was equal reason to suspect the whigs of pursuing their private interest by the means of popularity Indeed, some of them owed all their importance to it, and must in a little time have sunk into obscurity, had these turbulent commotions then subsided." *Massachusettensis.*

system of opposition." Whether they did or not, it is certain that mobs have been thought a necessary ingredient by the tories in their system of administration, mobs of the worst sort, with red coats, fuzees, and bayonets; and the lives and limbs of the whigs have been in greater danger from these, than ever the tories were from others.

"The scheme of the whigs flattered the people with the idea of independence; the tories' plan supposed a degree of subordination." This is artful enough, as usual, not to say jesuitical. The word independence is one of those which this writer uses, as he does treason and rebellion, to impose upon the undistinguishing on both sides of the Atlantic. But let us take him to pieces. What does he mean by independence? Does he mean independent of the crown of Great Britain, and an independent republic in America, or a confederation of independent republics? No doubt he intended the undistinguishing should understand him so. If he did, nothing can be more wicked, or a greater slander on the whigs; because he knows there is not a man in the province among the whigs, nor ever was, who harbors a wish of that sort. Does he mean that the people were flattered with the idea of total independence on parliament? If he does, this is equally malicious and injurious; because he knows that the equity and necessity of parliament's regulating trade has always been acknowledged; our determination to consent and submit to such regulations constantly expressed; and all the acts of trade, in fact, to this very day, much more submitted to and strictly executed in this province than any other in America.

There is equal ambiguity in the words "degree of subordination." The whigs acknowledge a subordination to the king, in as strict and strong a sense as the tories. The whigs acknowledge a voluntary subordination to parliament, as far as the regulation of trade. What degree of subordination, then, do the tories acknowledge? An absolute dependence upon parliament as their supreme legislative, in all cases whatever, in their internal polity, as well as taxation? This would be too gross, and would lose Massachusettensis all his readers; for there is nobody here who will expose his understanding so much, as explicitly to adopt such a sentiment. Yet it is such an absolute dependence and submission that these writers would persuade us to, or else there is no need of changing our sentiments and conduct. Why

will not these gentlemen speak out, show us plainly their opinion, that the new government they have fabricated for this province is better than the old, and that all the other measures we complain of are for our and the public good, and exhort us directly to submit to them? The reason is, because they know they should lose their readers.

"The whigs were sensible that there was no oppression that could be seen or felt." The tories have so often said and wrote this to one another, that I sometimes suspect they believe it to be true. But it is quite otherwise. The castle of the province was taken out of their hands and garrisoned by regular soldiers. This they could see, and they thought it indicated a hostile intention and disposition towards them. They continually paid their money to collectors of duties; this they could both see and feel. A host of placemen, whose whole business it was to collect a revenue, were continually rolling before them in their chariots. These they saw. Their governor was no longer paid by themselves, according to their charter, but out of the new revenue, in order to render their assemblies useless, and indeed contemptible. The judges' salaries were threatened every day to be paid in the same unconstitutional manner. The dullest eyesight could not but see to what all this tended, namely, — to prepare the way for greater innovations and oppressions. They knew a minister would never spend his money in this way, if he had not some end to answer by it. Another thing they both saw and felt. Every man, of every character, who, by voting, writing, speaking, or otherwise, had favored the Stamp Act, the Tea Act, and every other measure of a minister or governor, who they knew was aiming at the destruction of their form of government, and introducing parliamentary taxation, was uniformly, in some department or other, promoted to some place of honor or profit for ten years together; and, on the other hand, every man who favored the people in their opposition to those innovations, was depressed, degraded, and persecuted, so far as it was in the power of the government to do it.

This they considered as a systematical means of encouraging every man of abilities to espouse the cause of parliamentary taxation and the plan of destroying their charter privilege, and to discourage all from exerting themselves in opposition to them. This they thought a plan to enslave them; for they uniformly

think that the destruction of their charter, making the council and judges wholly dependent on the crown, and the people subject to the unlimited power of parliament as their supreme legislative, is slavery. They were certainly rightly told, then, that the ministry and their governors together had formed a design to enslave them, and that when once this was done, they had the highest reason to expect window-taxes, hearth-taxes, land-taxes, and all others; and that these were only paving the way for reducing the country to lordships. Were the people mistaken in these suspicions? Is it not now certain, that Governor Bernard, in 1764, had formed a design of this sort? Read his Principles of Polity. And that Lieutenant-Governor Oliver, as late as 1768, or 9, enforced the same plan? Read his letters. Now, if Massachusettensis will be ingenuous, avow this design, show the people its utility, and that it ought to be done by parliament, he will act the part of an honest man. But to insinuate that there was no such plan, when he knows there was, is acting the part of one of the junto.

It is true, that the people of this country in general, and of this province in special, have a hereditary apprehension of and aversion to lordships, temporal and spiritual. Their ancestors fled to this wilderness to avoid them; they suffered sufficiently under them in England. And there are few of the present generation who have not been warned of the danger of them by their fathers or grandfathers, and enjoined to oppose them. And neither Bernard nor Oliver ever dared to avow before them, the designs which they had certainly formed to introduce them. Nor does Massachusettensis dare to avow his opinion in their favor. I do not mean that such avowal would expose their persons to danger, but it would their character and writings to universal contempt.

When you were told that the people of England were depraved, the parliament venal, and the ministry corrupt, were you not told most melancholy truths? Will Massachusettensis deny any of them? Does not every man who comes from England, whig or tory, tell you the same thing? Do they make any secret of it, or use any delicacy about it? Do they not most of them avow that corruption is so established there as to be incurable, and a necessary instrument of government? Is not the British constitution arrived nearly to that point where the Roman repub-

lic was when Jugurtha left it, and pronounced it, "a venal city, ripe for destruction, if it can only find a purchaser?" If Massachusettensis can prove that it is not, he will remove from my mind one of the heaviest loads which lie upon it.

Who has censured the tories for remissness, I know not. Whoever it was, he did them great injustice. Every one that I know of that character has been, through the whole tempestuous period, as indefatigable as human nature will admit, going about seeking whom he might devour, making use of art, flattery, terror, temptation, and allurements, in every shape in which human wit could dress it up, in public and private; but all to no purpose. The people have grown more and more weary of them every day, until now the land mourns under them.

Massachusettensis is then seized with a violent fit of anger at the clergy.[1] It is curious to observe the conduct of the tories towards this sacred body. If a clergyman, of whatever character, preaches against the principles of the revolution, and tells the people that, upon pain of damnation, they must submit to an established government, the tories cry him up as an excellent man and a wonderful preacher, invite him to their tables, procure him missions from the society and chaplainships to the navy, and flatter him with the hopes of lawn sleeves. But if a clergyman preaches Christianity, and tells the magistrates that they were not distinguished from their brethren for their private emolument, but for the good of the people; that the people are bound in conscience to obey a good government, but are not bound to submit to one that aims at destroying all the ends of government, — oh sedition! treason!

The clergy in all ages and countries, and in this in particular, are disposed enough to be on the side of government as long as it is tolerable. If they have not been generally in the late administration on that side, it is a demonstration that the late

[1] "All our dissenting ministers were not inactive on this occasion. When the clergy engage in a political warfare, religion becomes a most powerful engine, either to support or overthrow the state. What effect must it have had upon the audience, to hear the same sentiments and principles, which they had before read in a newspaper, delivered on Sundays from the sacred desk, with a religious awe, and the most solemn appeals to Heaven, from lips, which they had been taught from their cradles to believe could utter nothing but eternal truths!" *Massachusettensis.*

administration has been universally odious. The clergy of this province are a virtuous, sensible, and learned set of men, and they do not take their sermons from newspapers, but the Bible; unless it be a few, who preach passive obedience. These are not generally curious enough to read Hobbes. It is the duty of the clergy to accommodate their discourses to the times, to preach against such sins as are most prevalent, and recommend such virtues as are most wanted. For example, — if exorbitant ambition and venality are predominant, ought they not to warn their hearers against those vices? If public spirit is much wanted, should they not inculcate this great virtue? If the rights and duties of Christian magistrates and subjects are disputed, should they not explain them, show their nature, ends, limitations, and restrictions, how much soever it may move the gall of Massachusettensis?

Let me put a supposition. Justice is a great Christian, as well as moral, duty and virtue, which the clergy ought to inculcate and explain. Suppose a great man of a parish should, for seven years together, receive six hundred pounds sterling a year, for discharging the duties of an important office, but, during the whole time, should never do one act or take one step about it. Would not this be great injustice to the public? And ought not the parson of that parish to cry aloud and spare not, and show such a bold transgressor his sin; show that justice was due to the public as well as to an individual; and that cheating the public of four thousand two hundred pounds sterling is at least as great a sin as taking a chicken from a private hen-roost, or perhaps a watch from a fob?

Then we are told that newspapers and preachers have excited "outrages disgraceful to humanity." Upon this subject, I will venture to say, that there have been outrages in this province which I neither justify, excuse, nor extenuate; but these were not excited, that I know of, by newspapers or sermons; that, however, if we run through the last ten years, and consider all the tumults and outrages that have happened, and at the same time recollect the insults, provocations, and oppressions which this people have endured, we shall find the two characteristics of this people, religion and humanity, strongly marked on all their proceedings. Not a life, nor, that I have ever heard, a single limb, has been lost through the whole. I will take upon me to say,

there is not another province on this continent, nor in his majesty's dominions, where the people, under the same indignities, would not have gone greater lengths. Consider the tumults in the three kingdoms; consider the tumults in ancient Rome, in the most virtuous of her periods; and compare them with ours. It is a saying of Machiavel no wise man ever contradicted, which has been literally verified in this province, that "while the mass of the people is not corrupted, tumults do no hurt." By which he means, that they leave no lasting ill effects behind.

But let us consider the outrages committed by the tories; half a dozen men shot dead in an instant in King Street; frequent resistance and affronts to civil officers and magistrates; officers, watchmen, citizens, cut and mangled in a most inhuman manner; not to mention the shootings for desertion, and the frequent cruel whippings for other faults, cutting and mangling men's bodies before the eyes of citizens, spectacles which ought never to be introduced into populous places. The worst sort of tumults and outrages ever committed in this province were excited by the tories. But more of this hereafter.

We are then told, that the whigs erected a provincial democracy, or republic, in the province. I wish Massachusettensis knew what a democracy or a republic is. But this subject must be considered another time.

NO. V.

We are at length arrived at the paper on which I made a few strictures some weeks ago; these I shall not repeat, but proceed to consider the other part of it.

We are told: "It is a universal truth, that he that would excite a rebellion, is at heart as great a tyrant as ever wielded the iron rod of oppression." Be it so. We are not exciting a rebellion. Opposition, nay, open, avowed resistance by arms, against usurpation and lawless violence, is not rebellion by the law of God or the land. Resistance to lawful authority makes rebellion. Hampden, Russell, Sidney, Somers, Holt, Tillotson, Burnet, Hoadly, &c. were no tyrants nor rebels, although some

of them were in arms, and the others undoubtedly excited resistance against the tories. Do not beg the question, Mr. Massachusettensis, and then give yourself airs of triumph. Remember the frank Veteran acknowledges, that "the word rebel is a convertible term."[1]

This writer next attempts to trace the spirit of opposition through the general court and the courts of common law. "It was the policy of the whigs, to have their questions upon high matters determined by yea and nay votes, which were published in the gazettes." And ought not great questions to be so determined? In many other assemblies, New York particularly, they always are. What better can be devised to discover the true sense of the people? It is extremely provoking to courtiers, that they cannot vote as the cabinet direct them, against their consciences, the known sense of their constituents, and the obvious good of the community, without being detected. Generally, perhaps universally, no unpopular measure in a free government, particularly the English, ought ever to pass. Why have the people a share in the legislature, but to prevent such measures from passing, I mean such as are disapproved by the people at large? But did not these yea and nay votes expose the whigs, as well as tories, to the impartial judgment of the public? If the votes of the former were given for measures injurious to the community, had not the latter an equal opportunity of improving them to the disadvantage of their adversaries in the next election? Besides, were not those few persons in the house, who generally voted for unpopular measures, near the governor, in possession of his confidence? Had they not the absolute disposal in their towns and counties of the favor of government? Were not all the judges, justices, sheriffs, coroners, and military officers in their towns made upon their recommendation? Did not this give them a prodigious weight and influence? Had the whigs any such advantage? And does not the influence of these yea and nay votes, consequently, prove to a demonstration the unanimity of the people against the measures of the court?

[1] "That they are rebels cannot be denied; would to God that it could! It is well for them that they are in the hands of a man of approved gentleness, humanity, and justice. But even rebel (in war at least) is a convertible term, which knave was never."

Letter from a Veteran to the Officers of the Army encamped at Boston.

As to what is said of "severe strictures, illiberal invectives, abuse, and scurrility, upon the dissentients," there was quite as much of all these published against the leading whigs. In truth, the strictures, &c. against the tories were generally nothing more than hints at the particular place or office, which was known to be the temptation to vote against the country. That "the dissentient was in danger of losing his bread and involving his family in ruin," is equally injurious. Not an instance can be produced of a member losing his bread or injuring his business by voting for unpopular measures. On the contrary, such voters never failed to obtain some lucrative employment, title, or honorary office, as a reward from the court.

If "one set of members in committee had always prepared the resolves,"[1] &c., which they did not, what would this prove, but that this set was thought by the house the fittest for the purpose? Can it ever be otherwise? Will any popular assembly choose its worst members for the best services? Will an assembly of patriots choose courtiers to prepare votes against the court? No resolves against the claims of parliament or administration, or the measures of the governor, (excepting those against the Stamp Act, and perhaps the answers to Governor Hutchinson's speeches upon the supremacy of parliament,) ever passed through the house without meeting an obstacle. The governor had, to the last hour of the house's existence, always some seekers and expectants in the house, who never failed to oppose, and offer the best arguments they could, and were always patiently heard. That "the lips of the dissentients were sealed up;" that "they sat in silence, and beheld with regret measures they dared not oppose," are groundless suggestions, and gross reflections upon the honor and courage of those members. The debates of this house were public, and every man who has attended the gallery, knows there never was more freedom of debate in any assembly.

Massachusettensis, in the next place, conducts us to the agent, and tells us "there cannot be a provincial agent without an appointment by the three branches of the assembly. The whigs

[1] "One particular set of members, in committee, always prepared the resolves and other spirited measures. At first, they were canvassed freely; at length would slide through the house without meeting an obstacle. The lips of the dissentients were sealed up. They sat in silence, and beheld with infinite regret the measures they durst not oppose." *Massachusettensis.*

soon found that they could not have such services rendered them from a provincial agent as would answer their purposes."

The treatment this province has received respecting the agency, since Mr. Hutchinson's administration commenced, is a flagrant example of injustice. There is no law which requires the province to maintain any agent in England; much less is there any reason which necessarily requires that the three branches should join in the appointment. In ordinary times, indeed, when a harmony prevails among the branches, it is well enough to have an agent constituted by all. But in times when the foundations of the constitution are disputed, and certainly attacked by one branch or the other, to pretend that the house ought to join the governor in the choice, is a palpable absurdity. It is equivalent to saying, that the people shall have no agent at all; that all communication shall be cut off; and that there shall be no channel through which complaints and petitions may be conveyed to the royal ear. Because a governor will not concur in an agent whose sentiments are not like his; nor will an agent of the governor's appointment be likely to urge accusations against him with any diligence or zeal, if the people have occasion to complain against him.

Every private citizen, much more, every representative body, has an undoubted right to petition the king, to convey such petition by an agent, and to pay him for his service. Mr. Bernard, to do him justice, had so much regard to these principles, as to consent to the payment of the people's agents while he staid; but Mr. Hutchinson was scarcely seated in the chair, as lieutenant-governor, before we had intelligence from England, that my Lord Hillsborough told Dr. Franklin, he had received a letter from Governor Hutchinson against consenting to the salary of the agent. Such an instruction was accordingly soon sent, and no agent for the board or house has received a farthing for services since that time, though Dr. Franklin and Mr. Bollan have taken much pains, and one of them expended considerable sums of money. There is a meanness in this play that would disgrace a gambler, — a manifest fear that the truth should be known to the sovereign or the people. Many persons have thought that the province ought to have dismissed all agents from that time, as useless and nugatory; this behavior amounting to a declaration, that we had no chance or hopes of justice from a minister.

But this province, at least as meritorious as any, has been long accustomed to indignities and injustice, and to bear both with unparalleled patience. Others have pursued the same method before and since; but we have never heard that their agents are unpaid. They would scarcely have borne it with so much resignation.

It is great assurance to blame the house for this, which was both their right and duty; but it is a stain in the character of his patron which will not be soon worn out. Indeed this passage seems to have been brought in chiefly for the sake of a stroke or two, addressed to the lowest and meanest of the people; I mean the insinuation, that the two agents doubled the *expense*, which is as groundless as it is contracted; and that the ostensible agent for the province was only agent for a few individuals that had got the art of wielding the house; and that several hundred sterling a year, for attending levees and writing letters, were worth preserving. We, my friends, know that no members have the art of wielding us or our house, but by concurring in our principles, and assisting us in our designs. Numbers in both houses have turned about, and expected to wield us round with them, but they have been disappointed, and ever will be. Such apostates have never yet failed of our utter contempt, whatever titles, places, or pensions they might obtain.

The agent has never echoed back, or transmitted to America, any sentiments which he did not give in substance to Governor Shirley, twenty years ago; and, therefore, this insinuation is but another slander.[1] The remainder of what is said of the agency is levelled at Dr. Franklin, and is but a dull appendix to Wedderburn's ribaldry, having all his malice, without any of his wit or spirit. Nero murdered Seneca, that he might pull up virtue by the roots; and the same maxim governs the scribblers and speechifiers on the side of the minister. It is sufficient to discover that any man has abilities and integrity, a love of virtue

1 "The person appointed by the house was the ostensible agent of the province; though, in fact, he was only the agent of a few individuals that had got the art of managing the house at their pleasure. He knew his continuing in office depended upon them. An office that yielded several hundred pounds sterling annually, the business of which consisted in little more than attending the levees of the great, and writing letters to America, was worth preserving. Thus, he was under a strong temptation to sacrifice the province to a party; and echoed back the sentiments of his patrons." *Massachusettensis.*

and liberty, he must be run down at all events. Witness Pitt, Franklin, and too many others.

My design in pursuing this malicious slanderer, concealed as he is under so soft and oily an appearance, through all the doublings of his tedious course, is to vindicate this colony from his base aspersions; that strangers now among us, and the impartial public, may see the wicked arts, which are still employed against us. After the vilest abuse upon the agent of the province, and the house that appointed him, we are brought to his majesty's council, and are told that the "whigs reminded them of their mortality. If any one opposed the violent measures, he lost his election the next May. Half the whole number, mostly men of the first families, note, and abilities, attached to their native country, wealthy, and independent, were tumbled from their seats in disgrace. Thus the board lost its weight, and the political balance was destroyed."

It is impossible for any man acquainted with this subject to read this zealous rant without smiling, until he attends to the wickedness of it, which will provoke his utmost indignation. Let us, however, consider it soberly.

From the date of our charter to the time of the Stamp Act, and indeed since that time, (notwithstanding the misrepresentations of our charter constitution, as too popular and republican,) the council of this province have been generally on the side of the governor and the prerogative. For the truth of this, I appeal to our whole history and experience. The art and power of governors, and especially the negative, have been a stronger motive on the one hand, than the annual election of the two houses on the other. In disputes between the governor and the house, the council have generally adhered to the former, and in many cases have complied with his humor, when scarcely any council by mandamus, upon this continent, would have done it.

But in the time of the Stamp Act, it was found productive of many mischiefs and dangers, to have officers of the crown, who were dependent on the ministry, and judges of the superior court, whose offices were thought incompatible with a voice in the legislature, members of council.

In May, 1765, Lieutenant-Governor Hutchinson, Secretary Oliver, and Mr. Belcher, officers of the crown, the judges of the

superior court, and some other gentlemen, who held commissions under the governor, were members of council. Mr. Hutchinson was chief justice, and a judge of probate for the first county, as well as lieutenant-governor, and a counsellor; too many offices for the greatest and best man in the world to hold, too much business for any man to do; besides, that these offices were frequently clashing and interfering with each other. Two other justices of the superior court were counsellors, and nearly and closely connected with him by family alliances. One other justice was judge of admiralty during pleasure. Such a jumble of offices never got together before in any English government. It was found, in short, that the famous triumvirate, Bernard, Hutchinson, and Oliver, the ever-memorable, secret, confidential letter-writers, whom I call the junto, had, by degrees, and before the people were aware of it, erected a tyranny in the province. Bernard had all the executive, and a negative on the legislative; Hutchinson and Oliver, by their popular arts and secret intrigues, had elevated to the board such a collection of crown-officers and their own relations, as to have too much influence there; and they had three of a family on the superior bench, which is the supreme tribunal in all causes, civil and criminal, vested with all the powers of the king's bench, common pleas, and exchequer, which gave them power over every act of this court. This junto, therefore, had the legislative and executive in their control, and more natural influence over the judicial than is ever to be trusted to any set of men in the world. The public, accordingly, found all these springs and wheels in the constitution set in motion to promote submission to the Stamp Act, and to discountenance resistance to it; and they thought they had a violent presumption, that they would forever be employed to encourage a compliance with all ministerial measures and parliamentary claims, of whatever character they might be.

The designs of the junto, however, were concealed as carefully as possible. Most persons were jealous; few were certain. When the assembly met, in May, 1766, after the Stamp Act was repealed, the whigs flattered themselves with hopes of peace and liberty for the future. Mr. Otis, whose abilities and integrity, whose great exertions, and most exemplary sacrifices of his private interest to the public service, had entitled him to all the promotion which the people could bestow, was chosen

speaker of the house. Bernard negatived the choice. It can scarcely be conceived by a stranger what an alarm this manœuvre gave to the public. It was thought equivalent to a declaration that, although the people had been so successful as to obtain a repeal of the Stamp Act, yet they must not hope to be quiet long; for parliament, by the Declaratory Act, had asserted its supreme authority, and new taxations and regulations should be made, if the junto could obtain them; and every man who should dare to oppose such projects, let his powers or virtues, his family or fortune, be what they would, should be surely cut off from all hopes of advancement. The electors thought it high time to be upon their guard. All the foregoing reasons and motives prevailed with the electors; and the crown officers and justices of the supreme court were left out of council in the new choice. Those who were elected in their places were all negatived by Bernard, which was considered as a fresh proof, that the junto still persevered in their designs of obtaining a revenue to divide among themselves.

The gentlemen elected anew were of equal fortune and integrity, at least, and not much inferior in abilities, to those left out; and indeed, in point of fortune, family, note, or abilities, the councils which have been chosen from that time to this, taken on an average, have been very little inferior, if any, to those chosen before. Let Massachusettensis descend, if he will, to every particular gentleman by name through the whole period, and I will make out my assertion.

Every impartial person will not only think these reasons a full vindication of the conduct of the two houses, but that it was their indispensable duty to their country, to act the part they did; and the course of time, which has developed the dark intrigues of the junto, before and since, has confirmed the rectitude and necessity of the measure. Had Bernard's Principles of Polity been published and known at that time, no member of the house, who should have voted for any of the persons then left out, if it was known to his constituents, would ever have obtained another election.

By the next step we rise to the chair. "With the board, the chair fell likewise," he says. But what a slander is this! Neither fell; both remained in as much vigor as ever. The junto, it is true, and some other gentlemen who were not in their

secret, but however, had been misled to concur in their measures, were left out of council. But the board had as much authority as ever. The board of 1766 could not have influenced the people to acknowledge the supreme, uncontrollable authority of parliament, nor could that of 1765 have done it. So that, by the chair and the board's falling, he means no more, if his meaning has any truth in it, than that the junto fell; the designs of taxing the colonies fell, and the schemes for destroying all the charters on the continent, and for erecting lordships fell. These, it must be acknowledged, fell very low indeed in the esteem of the people, and the two houses.

"The governor," says our wily writer, "by the charter, could do little or nothing without the council. If he called upon a military officer to raise the militia, he was answered, they were there already," &c. The council, by the charter, had nothing to do with the militia; the governor alone had all authority over them. The council, therefore, are not to blame for their conduct. If the militia refused obedience to the captain-general, or his subordinate officer, when commanded to assist in carrying into execution the Stamp Act, or in dispersing those who were opposing it, does not this prove the universal sense and resolution of the people not to submit to it? Did not a regular army do more to James II.? If those, over whom the Governor had the most absolute authority and decisive influence, refused obedience, does not this show how deeply rooted in all men's minds was the abhorrence of that unconstitutional power which was usurping over them? "If he called upon the council for their assistance, they must first inquire into the cause." An unpardonable crime, no doubt! But is it the duty of a middle branch of legislature to do as the first shall command them implicitly, or to judge for themselves? Is it the duty of a privy council to understand the subject before they give advice, or only to lend their names to any edict, in order to make it less unpopular? It would be a shame to answer such observations as these, if it was not for their wickedness. Our council, all along however, did as much as any council could have done. Was the mandamus council at New York able to do more to influence the people to a submission to the Stamp Act? Was the chair, the board, the septennial house, with the assistance of General Gage and his troops, able to do more in that city, than our branches

did in this province? Not one iota. Nor could Bernard, his council, and house, if they had been unanimous, have induced submission. The people would have spurned them all, for they are not to be wheedled out of their liberties by their own representatives, any more than by strangers. "If he wrote to government at home to strengthen his hands, some officious person procured and sent back his letters." At last, it seems to be acknowledged, that the governor did write for a military force to strengthen government. For what? To enable it to enforce stamp acts, tea acts, and other internal regulations, the authority of which the people were determined never to acknowledge.

But what a pity it was, that these worthy gentlemen could not be allowed, from the dearest affection to their native country, to which they had every possible attachment, to go on in profound confidential secrecy, procuring troops to cut our throats, acts of parliament to drain our purses, destroy our charters and assemblies, getting estates and dignities for themselves and their own families, and all the while most devoutly professing to be friends to our charter, enemies to parliamentary taxation, and to all pensions, without being detected! How happy if they could have annihilated all our charters, and yet have been beloved, nay, deified by the people, as friends and advocates of their charters! What masterly politicians, to have made themselves nobles for life, and yet have been thought very sorry, that the two houses were denied the privilege of choosing the council! How sagacious, to get large pensions for themselves, and yet be thought to mourn that pensions and venality were introduced into the country! How sweet and pleasant, to have been the most popular men in the community, for being staunch and zealous dissenters, true blue Calvinists, and able advocates for public virtue and popular government, after they had introduced an American episcopate, universal corruption among the leading men, and deprived the people of all share in their supreme legislative council! I mention an episcopate, for, although I do not know that Governors Hutchinson and Oliver ever directly solicited for bishops, yet they must have seen, that these would have been one effect, very soon, of establishing the unlimited authority of parliament!

I agree with this writer, that it was not the persons of Ber-

nard, Hutchinson, or Oliver, that made them obnoxious; but their principles and practices. And I will agree that, if Chatham, Camden, and St. Asaph, (I beg pardon for introducing these reverend names into such company, and for making a supposition which is absurd,) had been here, and prosecuted such schemes, they would have met with contempt and execration from this people. But when he says, "that had the intimations in those letters been attended to, we had now been as happy a people as good government could make us," it is too gross to make us angry. We can do nothing but smile. Have not these intimations been attended to? Have not fleets and armies been sent here whenever they requested? Have not governor's, lieutenant-governor's, secretary's, judge's, attorney-general's, and solicitor-general's salaries been paid out of the revenue, as they solicited? Have not taxes been laid and continued? Have not English liberties been abridged, as Hutchinson desired? Have not "penalties of another kind" been inflicted, as he desired? Has not our charter been destroyed, and the council put into the king's hands, as Bernard requested? In short, almost all the wild mock pranks of this desperate triumvirate have been attended to and adopted, and we are now as miserable as tyranny can well make us. That Bernard came here with the affections of New Jersey, I never heard nor read but in this writer. His abilities were considerable, or he could not have done such extensive mischief. His true British honesty and punctuality will be acknowledged by none, but such as owe all their importance to flattering him.

That Hutchinson was amiable and exemplary in some respects, and very unamiable and unexemplary in others, is a certain truth; otherwise he never would have retained so much popularity on one hand, nor made so pernicious a use of it, on the other. His behavior, in several important departments, was with ability and integrity, in cases which did not affect his political system; but he bent all his offices to that. Had he continued steadfast to those principles in religion and government, which, in his former life, he professed, and which alone had procured him the confidence of the people and all his importance, he would have lived and died, respected and beloved, and have done honor to his native country. But, by renouncing these principles and that conduct, which had made him and all his ancestors respectable,

his character is now considered by all America, and the best part of the three kingdoms, notwithstanding the countenance he receives from the ministry, as a reproach to the province that gave him birth; as that of a man who by all his actions aimed at making himself great at the expense of the liberties of his native country. This gentleman was open to flattery in so remarkable a degree, that any man who would flatter him was sure of his friendship, and every one who would not was sure of his enmity. He was credulous in a ridiculous degree, of every thing that favored his own plans, and equally incredulous of every thing which made against them. His natural abilities, which have been greatly exaggerated by persons whom he had advanced to power, were far from being of the first rate. His industry was prodigious. His knowledge lay chiefly in the laws and politics and history of this province, in which he had a long experience. Yet, with all his advantages, he never was master of the true character of his native country, not even of New England and the Massachusetts Bay. Through the whole troublesome period, since the last war, he manifestly mistook the temper, principles, and opinions of this people. He had resolved upon a system, and never could or would see the impracticability of it.

It is very true, that "all his abilities, virtues, interests, and connections were insufficient." But for what? To prevail on the people to acquiesce in the mighty claim of parliamentary authority. "The constitution was" *not* "gone." The suggestion that it was is a vile slander. It had as much vigor as ever, and even the governor had as much power as ever, excepting in cases which affected that claim. "The spirit," says this writer, "was truly republican." It was not so in any one case whatever, any further than the spirit of the British constitution is republican. Even in the grand fundamental dispute, the people arranged themselves under their house of representatives and council, with as much order as ever, and conducted their opposition as much by the constitution as ever. It is true, their constitution was employed against the measures of the junto, which created their enmity to it. However, I have not such a horror of republican spirit, which is a spirit of true virtue and honest independence; I do not mean on the king, but on men in power. This spirit is so far from being incompatible with the British

constitution, that it is the greatest glory of it; and the nation has always been most prosperous, when it has most prevailed and been most encouraged by the crown. I wish it increased in every part of the world, especially in America; and I think the measures the tories are now pursuing will increase it to a degree that will insure us, in the end, redress of grievances, and a happy reconciliation with Great Britain.

"Governor Hutchinson strove to convince us, by the principles of government, our charters, and acknowledgments, that our claims were inconsistent with the subordination due to Great Britain," &c., says this writer.

Suffer me to introduce here a little history. In 1764, when the system of taxing and new-modelling the colonies was first apprehended, Lieutenant-Governor Hutchinson's friends struggled, in several successive sessions of the general court, to get him chosen agent for the province at the court of Great Britain. At this time, he declared freely, *that he was of the same sentiment with the people, that parliament had no right to tax them; but differed from the country party only in his opinion of the policy of denying that right in their petitions*, &c. I would not injure him; I was told this by three gentlemen, who were of the committee of both houses, to prepare that petition, that he made this declaration explicitly before that committee. I have been told by other gentlemen, that he made the same declaration to them. It is possible that he might make use of expressions studied for the purpose, which would not strictly bear this construction. But it is certain that they understood him so, and that this was the general opinion of his sentiments until he came to the chair.

The country party saw that this aspiring genius aimed at keeping fair with the ministry, by supporting their measures, and with the people, by pretending to be of our principles, and between both, to trim himself up to the chair. The only reason why he did not obtain an election at one time, and was excused from the service at another, after he had been chosen by a small majority, was because the members knew he would not openly deny the right, and assure his majesty, the parliament, and ministry, that the people never would submit to it. For the same reason he was left out of council. But he continued to cultivate his popularity, and to maintain a general opinion among

the people that he denied the right in his private judgment, and this idea preserved most of those who continued their esteem for him.

But upon Bernard's removal, and his taking the chair as lieutenant-governor, he had no further expectations from the people, nor complaisance for their opinions. In one of his first speeches he took care to advance the supreme authority of parliament. This astonished many of his friends. They were heard to say, we have been deceived. We thought he had been abused, but we now find what has been said of him is true. He is determined to join in the designs against this country. After his promotion to the government, finding that the people had little confidence in him, and knowing that he had no interest at home to support him, but what he had acquired by joining with Bernard in kicking up a dust, he determined to strike a bold stroke, and, in a formal speech to both houses, became a champion for the unbounded authority of parliament over the colonies. This, he thought, would lay the ministry under obligation to support him in the government, or else to provide for him out of it, not considering that starting that question before that assembly, and calling upon them, as he did, to dispute with him upon it, was scattering firebrands, arrows, and death in sport. The arguments he then advanced were inconclusive indeed; but they shall be considered, when I come to the feeble attempt of Massachusettensis to give a color to the same position.

The house, thus called upon either to acknowledge the unlimited authority of parliament, or confute his arguments, were bound, by their duty to God, their country, and posterity, to give him a full and explicit answer. They proved incontestably that he was out in his facts, inconsistent with himself, and in every principle of his law he had committed a blunder. Thus the fowler was caught in his own snare; and although this country has suffered severe temporary calamities in consequence of this speech, yet I hope they will not be durable; but his ruin was certainly in part owing to it. Nothing ever opened the eyes of the people so much, as to his designs, excepting his letters. Thus it is the fate of Massachusettensis to praise this gentleman for those things which the wise part of mankind condemn in him, as the most insidious and mischievous of actions.

If it was out of his power to do us any more injuries, I should wish to forget the past; but, as there is reason to fear he is still to continue his malevolent labors against this country, although he is out of our sight, he ought not to be out of our minds. This country has every thing to fear, in the present state of the British court, while the lords Bute, Mansfield, and North have the principal conduct of affairs, from the deep intrigues of that artful man.

To proceed to his successor, whom Massachusettensis has been pleased to compliment with the epithet of "amiable." I have no inclination to detract from this praise; but have no panegyrics or invectives for any man, much less for any governor, until satisfied of his character and designs. This gentleman's conduct, although he came here to support the systems of his two predecessors, and contracted to throw himself into the arms of their connections, when he has acted himself, and not been teased by others much less amiable and judicious than himself, into measures which his own inclination would have avoided, has been in general as unexceptionable as could be expected, in his very delicate, intricate, and difficult situation.

We are then told, "that disaffection to Great Britain was infused into the body of the people." The leading whigs have ever, systematically and upon principle, endeavored to preserve the people from all disaffection to the king, on the one hand, and the body of the people of England, on the other; but to lay the blame, where it is justly due, on the ministry and their instruments.

We are next conducted into the superior court, and informed "that the judges were dependent on the annual grants of the general court; that their salaries were small, in proportion to the salaries of other officers of less importance; that they often petitioned the assembly to enlarge them, without success, and were reminded of their dependence; that they remained unshaken amid the raging tempests, which is to be attributed rather to their firmness than situation."

That the salaries were small must be allowed; but not smaller in proportion than those of other officers. All salaries in this province have been and are small. It has been the policy of the country to keep them so; not so much from a spirit of parsimony, as an opinion, that the service of the public ought to be

an honorary, rather than a lucrative employment; and that the great men ought to be obliged to set examples of simplicity and frugality before the people.

But, if we consider things maturely, and make allowance for all circumstances, I think the country may be vindicated. This province, during the last war, had such overbearing burdens upon it, that it was necessitated to use economy in every thing. At the peace she was half a million sterling in debt, nearly. She thought it the best policy to get out of debt before she raised the wages of her servants; and if Great Britain had thought as wisely, she would not now have had one hundred and forty millions to pay; and she would never have thought of taxing America. Low as the wages were, it was found that, whenever a vacancy happened, the place was solicited with much more anxiety and zeal than the kingdom of heaven.

Another cause which had its effect was this. The judges of that court had almost always enjoyed some other office. At the time of the Stamp Act the chief justice was lieutenant-governor, which yielded him a profit; and a judge of probate for the county of Suffolk, which yielded him another profit; and a counsellor, which, if it was not very profitable, gave him an opportunity of promoting his family and friends to other profitable offices, an opportunity which the country saw he most religiously improved. Another justice of this court was a judge of admiralty, and another was judge of probate for the county of Plymouth. The people thought, therefore, that as their time was not wholly taken up by their offices, as judges of the superior court, there was no reason why they should be paid as much as if it had been.

Another reason was this. Those justices had not been bred to the bar, but taken from merchandise, husbandry, and other occupations; had been at no great expense for education or libraries, and therefore, the people thought that equity did not demand large salaries.

It must be confessed that another motive had its weight. The people were growing jealous of the chief justice, and two other justices at least, and therefore thought it imprudent to enlarge their salaries, and, by that means, their influence.

Whether all these arguments were sufficient to vindicate the people for not enlarging their salaries, I shall leave to you, my

friends, whose right it is to judge. But that the judges petitioned "often" to the assembly I do not remember. I knew it was suspected by many, and confidently affirmed by some, that Judge Russell carried home with him, in 1766, a petition to his majesty, subscribed by himself and Chief Justice Hutchinson at least, praying his majesty to take the payment of the judges into his own hands; and that this petition, together with the solicitations of Governor Bernard and others, had the success to procure the act of parliament, to enable his majesty to appropriate the revenue to the support of the administration of justice, &c., from whence a great part of the present calamities of America have flowed.

That the high whigs took *care* to get themselves chosen of the grand juries, I do not believe.[1] Nine tenths of the people were high whigs; and therefore it was not easy to get a grand jury without nine whigs in ten, in it. And the matter would not be much mended by the new act of parliament. The sheriff must return the same set of jurors, court after court, or else his juries would be, nine tenths of them, high whigs still. Indeed the tories are so envenomed now with malice, envy, revenge and disappointed ambition, that they would be willing, for what I know, to be jurors for life, in order to give verdicts against the whigs. And many of them would readily do it, I doubt not, without any other law or evidence than what they found in their own breasts. The suggestion of legerdemain, in drawing the names of petit jurors out of the box, is scandalous. Human wisdom cannot devise a method of obtaining petit jurors more fairly, and better secured against a possibility of corruption of any kind, than that established by our provincial law. They were drawn by chance out of a box in open town meeting, to which the tories went, or might have gone, as well as the whigs, and have seen with their own eyes, that nothing unfair ever did or could take place. If the jurors consisted of whigs, it was because the freeholders were whigs, that is honest men. But now, it seems, if Massachusettensis can have his will, the sheriff, who will be a person properly qualified for the purpose, is to pick

[1] "It is difficult to account for so many of the first rate whigs being returned to serve on the petit jury at the term next after extraordinary insurrections, without supposing some legerdemain in drawing their names out of the box."
Massachusettensis.

out a tory jury, if he can find one in ten, or one in twenty, of that character among the freeholders; and it is no doubt expected, that every newspaper that presumes to deny the right of parliament to tax us, or destroy our charter, will be presented as a libel, and every member of a committee of correspondence, or a congress, &c. &c. &c., is to be indicted for rebellion. These would be pleasant times to Massachusettensis and the junto, but they will never live to see them.

"The judges pointed out seditious libels on governors, magistrates, and the whole government to no effect." They did so; but the jurors thought some of these no libels, but solemn truths. At one time, I have heard that all the newspapers for several years, the Massachusetts Gazette, Evening Post, Boston Chronicle, Boston Gazette, and Massachusetts Spy, were laid before a grand jury at once. The jurors thought there were multitudes of libels written by the tories, and they did not know whom they should attack, if they presented them; perhaps Governor Bernard, Lieutenant-Governor Hutchinson, Secretary Oliver — possibly, the Attorney-General.[1] They saw so many difficulties they knew not what to do.

As to the riots and insurrections, it is surprising that this writer should say, — "Scarce one offender was indicted, and I think not one convicted." Were not many indicted, convicted, and punished too, in the counties of Essex, and Middlesex, and indeed, in every other county? But, perhaps he will say, he means such as were connected with politics. Yet this is not true; for a large number in Essex were punished for abusing an informer, and others were indicted and convicted in Boston for a similar offence. None were indicted for pulling down the stamp office, because this was thought an honorable and glorious action, not a riot. And so it must be said of several other tumults. But was not this the case in royal as well as charter governments? Nor will this inconvenience be remedied by a sheriff's jury, if such a one should ever sit. For if such a jury should convict, the people will never bear the punishment. It is in vain to expect or hope to carry on government against the universal bent and genius of the people; we may whimper and

[1] A keen allusion to Mr. Sewall himself, supposed by the writer to be the author of the pieces signed Massachusettensis.

whine as much as we will, but nature made it impossible when she made men.

If "causes of *meum* and *tuum* were not always exempt from party influence," the tories will get no credit by an examination into particular cases. Though I believe there was no great blame on either party in this respect, where the case was not connected with politics.

We are then told, — "The whigs once flattered themselves they should be able to divide the province between them." I suppose he means, that they should be able to get the honorable and lucrative offices of the province into their hands. If this was true, they would be chargeable with only designing what the tories have actually done; with this difference, that the whigs would have done it by saving the liberties and the constitution of the province, whereas the tories have done it by the destruction of both. That the whigs have ambition, a desire of profit, and other passions, like other men, it would be foolish to deny. But this writer cannot name a set of men, in the whole British empire, who have sacrificed their private interest to their nation's honor and the public good in so remarkable a manner, as the leading whigs have done in the two last administrations.

As to "cutting asunder the sinews of government, and breaking in pieces the ligament of social life," so far as this has been done, I have proved by incontestable evidence from Bernard's, Hutchinson's, and Oliver's letters, that the tories have done it, against all the endeavors of the whigs to prevent them from first to last.

The public is then amused with two instances of the weakness of our government, and these are, with equal artifice and injustice, insinuated to be chargeable upon the whigs. But the whigs are as innocent of these as the tories. Malcolm was injured as much against the inclinations and judgment of the whigs as the tories. But the real injury he received is exaggerated by this writer. The cruelty of his whipping and the danger of his life, are too highly colored.

Malcolm was such an oddity as naturally to excite the curiosity and ridicule of the lowest class of people wherever he went; had been active in battle against the regulators in North Carolina, who were thought in Boston to be an injured people. A few weeks before, he had made a seizure at Kennebec River, a hundred and

fifty miles from Boston, and by some imprudence had excited the wrath of the people there in such a degree that they tarred and feathered him over his clothes. He comes to Boston to complain. The news of it was spread in town. It was a critical time, when the passions of the people were warm. Malcolm attacked a lad in the street, and cut his head with a cutlass, in return for some words from the boy, which I suppose were irritating. The boy ran bleeding through the street to his relations, of whom he had many. As he passed the street, the people inquired into the cause of his wounds; and a sudden heat arose against Malcolm, which neither whigs nor tories, though both endeavored it, could restrain, and produced the injuries of which he justly complained.[1] But such a coincidence of circumstanecs might at any time, and in any place, have produced such an effect; and therefore it is no evidence of the weakness of government. Why he petitioned the general court, unless he was advised to it by the tories, to make a noise, I know not. That court had nothing to do with it. He might have brought his action against the trespassers, but never did. He chose to go to England, and get two hundred pounds a year, which would make his tarring the luckiest incident of his life.

The hospital at Marblehead is another instance, no more owing to the politics of the times than the burning of the temple at Ephesus. This hospital was newly erected, much against the will of the multitude. The patients were careless, some of them wantonly so; and others were suspected of designing to spread the smallpox in the town, which was full of people who had not passed through the distemper. It is needless to be particular; but the apprehension became general; the people arose and burnt the hospital. But the whigs are so little blamable for this, that two of the principal whigs in the province, gentlemen highly esteemed and beloved in the town, even by those who burnt

[1] The account given of this affair by Massachusettensis may be put in contrast with this: —

"One Malcolm, a loyal subject, and as such entitled to protection, the evening before the last winter sessions of the general court, was dragged out of his house, stripped, tarred and feathered, and carted several hours in the severest frost of that winter, to the utmost hazard of his life. He was carried to the gallows with a halter about his neck, and, in his passage to and from the gallows, was beaten with as cruel stripes as ever were administered by the hands of a savage. The whipping, however, kept up the circulation of his blood, and saved the poor man's life."

the building, were owners of it. The principles and temper of the times had no share in this, any more than in cutting down the market in Boston, or in demolishing mills and dams in some parts of the country, in order to let the alewives pass up the streams, forty years ago. Such incidents happen in all governments at times; and it is a fresh proof of the weakness of this writer's cause, that he is driven to such wretched shifts to defend it.

Towards the close of this long speculation, Massachusettensis grows more and more splenetical, peevish, angry, and absurd.

He tells us, that in order to avoid the necessity of altering our provincial constitution, government at home made the judges independent of the grants of the general assembly.[1] That is, in order to avoid the hazard of taking the fort by storm, they determined to take it by sap. In order to avoid altering our constitution, they changed it in the most essential manner; for, surely, by our charter, the province was to pay the judges as well as the governor. Taking away this privilege, and making them receive their pay from the crown, was destroying the charter so far forth, and making them dependent on the minister. As to their being dependent on the leading whigs, he means they were dependent on the province. And which is fairest to be dependent on, the province or the minister? In all this troublesome period, the leading whigs had never hesitated about granting their salaries, nor ever once moved to have them lessened; nor would the house have listened to them if they had. "This was done," he says, "to make them steady." We know that very well. Steady to what? Steady to the plans of Bernard, Hutchinson, Oliver, North, Mansfield, and Bute, which the people thought was steadiness to their ruin; and therefore it was found that a determined spirit of opposition to it arose in every part of the province, like that to the Stamp Act.

The chief justice, it is true, was accused by the house of representatives, of receiving a bribe,— a ministerial, not a royal bribe. For the king can do no wrong, although he may be deceived in

[1] "The judges of the superior court had not been staggered, though their feet stood in slippery places. They depended upon the leading whigs for their support. To keep them steady, they were made independent of the grants of the general assembly; but it was not a remedy any way adequate to the disease. The whigs now turned their artillery against them, and it played briskly. The chief justice, for accepting the crown grant, was accused of receiving a royal bribe." *Massachusettensis.*

his grant. The minister is accountable. The crime of receiving an illegal patent is not the less for purchasing it even of the king himself. Many impeachments have been for such offences.

He talks about "attempts to strengthen government and save our charter."[1] With what modesty can he say this, when he knows that the overthrow of our charter was the very object which the junto had been invariably pursuing for a long course of years? Does he think his readers are to be deceived by such gross arts? But he says, "the whigs subverted the charter constitution, abridged the freedom of the house, annihilated the freedom of the board, and rendered the governor a doge of Venice." The freedom of the house was never abridged; the freedom of the board was never lessened. The governor had as much power as ever. The house and board, it is true, would do nothing in favor of parliamentary taxation. Their judgments and consciences were against it; and if they ever had done any thing in favor of it, it would have been through fear and not freedom. The governor found he could do nothing in favor of it, excepting to promote, in every department in the state, men who hated the people, and were hated by them. Enough of this he did in all conscience; and, after filling offices with men who were despised, he wondered that the officers were not revered. "They, the whigs, engrossed all the power of the province into their own hands." That is, the house and board were whigs; the grand juries and petit juries were whigs; towns were whigs; the clergy were whigs; the agents were whigs; and wherever you found people, you found all whigs; excepting those who had commissions from the crown or the governor. This is almost true; and it is to the eternal shame of the tories that they should pursue their *ignis fatuus* with such ungovernable fury as they have done, after such repeated and multiplied demonstrations, that the whole people were so universally bent against them. But nothing will satisfy them still but blood and carnage. The destruction of the whigs, charters, English liberties, and all, they must and will have, if it costs the blood of

[1] "Thus, my friends, those very persons that had made you believe, that every attempt to strengthen government and save our charter was an infringement of your privileges, by little and little destroyed your real liberty, subverted your charter constitution, abridged the freedom of the house, annihilated the freedom of the board, and rendered the governor a mere doge of Venice."
Massachusettensis.

tens of thousands of innocent people. This is the benign temper of the tories.

This influence of the whigs he calls a democracy or republic, and then a despotism; two ideas incompatible with each other. A democratical despotism is a contradiction in terms.

He then says, that "the good policy of the act for regulating the government in this province will be the subject of some future paper." But that paper is still to come, and I suspect ever will be. I wish to hear him upon it, however.

With this, he and the junto ought to have begun. Bernard and the rest, in 1764, ought to have published their objections to this government, if they had been honest men, and produced their arguments in favor of the alteration, convinced the people of the necessity of it, and proposed some constitutional plan for effecting it. But the same motives which induced them to take another course, will prevail with Massachusettensis to wave the good policy of the act. He will be much more cunningly employed in laboring to terrify women and children with the horrors of a civil war, and the dread of a division among the people. There lies your forte, Massachusettensis; make the most of it.

NO. VI.

Such events as the resistance to the Stamp Act, and to the Tea Act, particularly the destruction of that which was sent by the ministry, in the name of the East India Company, have ever been cautiously spoken of by the whigs, because they knew the delicacy of the subject, and they lived in continual hopes of a speedy restoration of liberty and peace. But we are now thrown into a situation, which would render any further delicacy upon this point criminal.

Be it remembered, then, that there are tumults, seditions, popular commotions, insurrections, and civil wars, upon just occasions as well as unjust.

Grotius B. 1, c. 3, § 1, observes, "that some sort of private war may be lawfully waged. It is not repugnant to the law of nature, for any one to repel injuries by force."

§ 2. "The liberty allowed before is much restrained since the

erecting of tribunals. Yet there are some cases wherein that right still subsists; that is, when the way to legal justice is not open; for the law which forbids a man to pursue his right any other way, ought to be understood with this equitable restriction, that one finds judges to whom he may apply," &c.

"* It is in vain to seek a government in all points free from a possibility of civil wars, tumults, and seditions; that is a blessing denied to this life, and reserved to complete the felicity of the next. Seditions, tumults, and wars do arise from mistake or from malice; from just occasions or unjust. . . . Seditions proceeding from malice are seldom or never seen in popular governments; for they are hurtful to the people, and none have ever willingly and knowingly hurt themselves. There may be, and often is, malice in those who excite them; but the people is ever deceived, and whatever is thereupon done, ought to be imputed to error, &c. But in absolute monarchies, almost all the troubles that arise proceed from malice; they cannot be reformed; the extinction of them is exceeding difficult, if they have continued long enough to corrupt the people; and those who appear against them seek only to set up themselves or their friends. The mischiefs designed are often dissembled or denied, till they are past all possibility of being cured by any other way than force; and such as are by necessity driven to use that remedy, know they must perfect their work or perish. He that draws his sword against the prince, say the French, ought to throw away the scabbard; for though the design be never so just, yet the authors are sure to be ruined if it miscarry. Peace is seldom made, and never kept, unless the subject retain such a power in his hands as may oblige the prince to stand to what is agreed; and, in time, some trick is found to deprive him of that benefit.

"It may seem strange to some that I mention seditions, tumults, and wars, upon just occasions; but I can find no reason to retract the terms. God, intending that men should live justly with one another, does certainly intend that he or they, who do no wrong, should suffer none; and the law that forbids injuries were of no use if no penalty might be inflicted on those that will not obey it. If injustice, therefore, be evil, and injuries be forbidden, they are also to be punished; and the law instituted

* Sidney's *Discourses upon Government*, c. 2, § 24. The extracts quoted here are not, in the original, continuous passages.

for their prevention must necessarily intend the avenging of such as cannot be prevented. The work of the magistracy is to execute this law; the sword of justice is put into their hands to restrain the fury of those within the society who will not be a law to themselves; and the sword of war to protect the people against the violence of foreigners. This is without exception, and would be in vain if it were not. But the magistrate who is to protect the people from injury, may, and is often known not to have done it; he renders his office sometimes *useless by neglecting to do justice*, sometimes *mischievous by overthrowing it.* This strikes at the root of God's general ordinance, that there should be laws; and the particular ordinances of all societies, that appoint such as seem best to them. *The magistrate, therefore, is comprehended under both, and subject to both, as well as private men.*

"The ways of preventing or punishing injuries, are judicial or extrajudicial. Judicial proceedings are of force against those who submit, or may be brought to trial, but are of no effect against those who resist, and are of such power that they cannot be constrained. It were absurd to cite a man to appear before a tribunal, *who can awe the judges, or has armies to defend him;* and impious to think that he who has added treachery to his other crimes, and usurped a power above the law, should be protected by the enormity of his wickedness. Legal proceedings, therefore, are to be used when the delinquent submits to the law; *and all are just, when he will not be kept in order by the legal.*

"The word *sedition* is generally applied to all numerous assemblies without or against the authority of the magistrate, or of those who assume that power. Athaliah and Jezebel were more ready to cry out treason than David, &c. Tumult is from the disorderly manner of those assemblies, where things can seldom be done regularly; and war is that "*decertatio per vim,*" or trial by force, to which men come when other ways are ineffectual.

"If the laws of God and men are therefore of no effect when the magistracy is left at liberty to break them, and if the lusts of those who are too strong for the tribunals of justice, cannot be otherwise restrained than by sedition, tumults, and war; those seditions, tumults, and wars, are justified by the laws of God and man.

"I will not take upon me to enumerate all the cases in which this may be done; but content myself with three, which have

most frequently given occasion for proceedings of this kind. The first is, when one or more men take upon them the power and name of a magistracy to which they are not justly called. The second, when one or more, being justly called, continue in their magistracy longer than the laws by which they are called do prescribe. And the third, when he, or they, who are rightly called, do assume a power, though within the time prescribed, that the law does not give, or turn that which the law does give, to an end different and contrary to that which is intended by it.

"The same course is justly used against a legal magistrate who takes upon him to exercise a power which the law does not give; for in that respect he is a private man, — "*Quia*," as Grotius says, *eatenus non habet imperium*," — and may be restrained as well as any other; because he is not set up to do what he lists, but what the law appoints for the good of the people; and as he has no other power than what the law allows, so the same law limits and directs the exercise of that which he has."

"* When we speak of a tyrant that may lawfully be dethroned by the people, we do not mean by the word *people*, the vile populace or rabble of the country, nor the cabal of a small number of factious persons, but the greater and more judicious part of the subjects, of all ranks. Besides, the tyranny must be so notorious, and evidently clear, as to leave nobody any room to doubt of it, &c. Now, a prince may easily avoid making himself so universally suspected and odious to his subjects; for, as Mr. Locke says in his Treatise of Civil Government, c. 18, § 209, — 'It is as impossible for a governor, if he really means the good of the people, and the preservation of them and the laws together, not to make them see and feel it, as it is for the father of a family not to let his children see he loves and takes care of them.' And therefore the general insurrection of a whole nation does not deserve the name of a rebellion. We may see what Mr. Sidney says upon this subject in his Discourse concerning Government: — 'Neither are subjects bound to stay till the prince has entirely finished the chains which he is preparing for them, and put it out of their power to oppose. It is sufficient that all the advances which he makes are manifestly tending to their oppression, that he is marching boldly on to the ruin of the State.' In such a case, says Mr.

* Pufendorf's *Law of Nature and Nations*, l. vii. c. viii. § 5, 6. Barbeyrac's note on section 6.

Locke, admirably well, — 'How can a man any more hinder himself from believing, in his own mind, which way things are going, or from casting about to save himself, than he could from believing the captain of the ship he was in was carrying him and the rest of his company to Algiers, when he found him always steering that course, though cross winds, leaks in his ship, and want of men and provisions, did often force him to turn his course another way for some time, which he steadily returned to again, as soon as the winds, weather, and other circumstances would let him?' This chiefly takes place with respect to kings, whose power is limited by fundamental laws.

"If it is objected that the people, being ignorant and always discontented, to lay the foundation of government in the unsteady opinion and the uncertain humor of the people, is to expose it to certain ruin; the same author will answer you, that 'on the contrary, people are not so easily got out of their old forms as some are apt to suggest. England, for instance, notwithstanding the many revolutions that have been seen in that kingdom, has always kept to its old legislative of king, lords, and commons; and whatever provocations have made the crown to be taken from some of their princes' heads, they never carried the people so far as to place it in another line.' But it will be said, this hypothesis lays a ferment for frequent rebellion. 'No more,' says Mr. Locke, 'than any other hypothesis. For when the people are made miserable, and find themselves exposed to the ill usage of arbitrary power, cry up their governors as you will for sons of Jupiter; let them be sacred and divine, descended or authorized from heaven; give them out for whom or what you please, the same will happen. The people generally ill treated, and contrary to right, will be ready upon any occasion to ease themselves of a burden that sits heavy upon them. 2. Such revolutions happen not upon every little mismanagement in public affairs. Great mistakes in the ruling part, many wrong and inconvenient laws, and all the slips of human frailty will be borne by the people without mutiny and murmur. 3. This power in the people of providing for their safety anew by a legislative, when their legislators have acted contrary to their trust by invading their property, is the best fence against rebellion, and the probablest means to hinder it; for rebellion being an opposition, not to persons, but authority, which is founded only in

the constitutions and laws of the government; those, whoever they be, *who by force break through, and by force justify the violation of them, are truly and properly rebels.* For when men, by entering into society and civil government, have excluded force, and introduced laws for the preservation of property, peace, and unity, among themselves; those who set up force again, in opposition to the laws, do *rebellare*, that is, do bring back again the state of war, and are properly, rebels,' as the author shows. In the last place, he demonstrates that there are also greater inconveniences in allowing all to those that govern, than in granting something to the people. But it will be said, that ill affected and factious men may spread among the people, and make them believe that the prince or legislative act contrary to their trust, when they only make use of their due prerogative. To this Mr. Locke answers, that the people, however, is to judge of all that; because nobody can better judge whether his trustee or deputy acts well, and according to the trust reposed in him, than he who deputed him. 'He might make the like query,' (says Mr. Le Clerc, from whom this extract is taken) 'and ask, whether the people being oppressed by an authority which they set up, but for their own good, it is just that those who are vested with this authority, and of which they are complaining, should themselves be judges of the complaints made against them. The greatest flatterers of kings dare not say, that the people are obliged to suffer absolutely all their humors, how irregular soever they be; and therefore must confess, that when no regard is had to their complaints, the very foundations of society are destroyed; the prince and people are in a state of war with each other, like two independent states, that are doing themselves justice, and acknowledge no person upon earth, who, in a sovereign manner, can determine the disputes between them," &c.

If there is any thing in these quotations, which is applicable to the destruction of the tea, or any other branch of our subject, it is not my fault; I did not make it. Surely Grotius, Pufendorf, Barbeyrac, Locke, Sidney, and Le Clerc, are writers of sufficient weight to put in the scale against the mercenary scribblers in New York and Boston, who have the unexampled impudence and folly, to call these, which are revolution principles, in question, and to ground their arguments upon passive obedience as a corner stone. What an opinion must these

writers have of the principles of their patrons, the lords Bute, Mansfield, and North, when they hope to recommend themselves by reviving that stupid doctrine, which has been infamous so many years. Dr. Sacheverel himself tells us that his sermons were burnt by the hands of the common hangman, by the order of the king, lords, and commons, in order to fix an eternal and indelible brand of infamy on that doctrine.

In the Gazette of January the 2d, Massachusettensis entertains you with an account of his own important self. This is a subject which he has very much at heart, but it is of no consequence to you or me, and therefore little need be said of it. If he had such a stand in the community, that he could have seen all the political manœuvres, it is plain he must have shut his eyes, or he never could have mistaken so grossly, causes for effects, and effects for causes.

He undertakes to point out the principles and motives upon which the Blockade Act was made, which were, according to him, the destruction of the East India Company's tea. He might have said more properly, the ministerial tea; for such it was, and the company are no losers; they have received from the public treasury compensation for it.

Then we are amused with a long discourse about the nature of the British government, commerce, agriculture, arts, manufactures, regulations of trade, custom-house officers, which, as it has no relation to the subject, I shall pass over.

The case is shortly this, — the East India Company, by their contract with government, in their charter and statute, are bound, in consideration of their important profitable privileges, to pay to the public treasury a revenue annually, of four hundred thousand pounds sterling, so long as they can hold up their dividends at twelve per cent., and no longer.

The mistaken policy of the ministry, in obstinately persisting in their claim of right to tax America, and refusing to repeal the duty on tea, with those on glass, paper, and paint, had induced all America, except a few merchants in Boston, most of whom were closely connected with the junto, to refuse to import tea from Great Britain; the consequence of which was a kind of stagnation in the affairs of the company, and an immense accumulation of tea in their stores, which they could not sell. This, among other causes, contributed to affect their credit, and their

dividends were on the point of falling below twelve per cent., and consequently the government was upon the point of losing four hundred thousand pounds sterling a year of revenue. The company solicited the ministry to take off the duty in America; but they, adhering to their plan of taxing the colonies and establishing a precedent, framed an act to enable the company to send their tea directly to America. This was admired as a masterpiece of policy. It was thought they would accomplish four great purposes at once, — establish their precedent of taxing America; raise a large revenue there by the duties; save the credit of the company, and the four hundred thousand pounds to the government. The company, however, were so little pleased with this, that there were great debates among the directors, whether they should risk it, which were finally determined by a majority of one only; and that one, the chairman, being unwilling, as it is said, to interfere in the dispute between the minister and the colonies, and uncertain what the result would be; and this small majority was not obtained, as it is said, until a sufficient intimation was given, that the company should not be losers.

When these designs were made known, it appeared that American politicians were not to be deceived; that their sight was as quick and clear as the minister's; and that they were as steady to their purpose as he was to his. This was thought by all the colonies to be the precise point of time when it became absolutely necessary to make a stand. If the tea should be landed, it would be sold; if sold, the duties would amount to a large sum, which would be instantly applied to increase the friends and advocates for more duties, and to divide the people; and the company would get such a footing, that no opposition afterwards could ever be effectual. And as soon as the duties on tea should be established, they would be ranked among post-office fees and other precedents, and used as arguments both of the right and expediency of laying on others, perhaps on all the necessaries, as well as conveniences and luxuries of life. The whole continent was united in the sentiment, that all opposition to parliamentary taxation must be given up forever, if this critical moment was neglected. Accordingly, New York and Philadelphia determined that the ships should be sent back; and Charleston, that the tea should be stored and locked up. This

was attended with no danger in that city, because they are fully united in sentiment and affection, and have no junto to perplex them. Boston was under greater difficulties. The consignees at New York and Philadelphia most readily resigned. The consignees at Boston, the children, cousins, and most intimate connections of Governor Hutchinson, refused. I am very sorry that I cannot stir a single step in developing the causes of my country's miseries without stumbling upon this gentleman. But so it is. From the near relation and most intimate connection of the consignees with him, there is great cause of jealousy, if not a violent presumption, that he was at the bottom of all this business; that he had planned it in his confidential letters with Bernard, and both of them joined in suggesting and recommending it to the ministry. Without this supposition, it is difficult to account for the obstinacy with which the consignees refused to resign, and the governor to let the vessel go. However this might be, Boston is the only place upon the continent, perhaps in the world, which ever breeds a species of misanthropes, who will persist in their schemes for their private interest with such obstinacy, in opposition to the public good; disoblige all their fellow-citizens for a little pelf, and make themselves odious and infamous, when they might be respected and esteemed. It must be said, however, in vindication of the town, that this breed is spawned chiefly by the junto. The consignees would not resign; the custom-house refused clearances; Governor Hutchinson refused passes by the castle. The question then was with many, whether the governor, officers, and consignees should be compelled to send the ships hence? An army and navy was at hand, and bloodshed was apprehended. At last, when the continent, as well as the town and province, were waiting the issue of this deliberation with the utmost anxiety, a number of persons, in the night, put them out of suspense, by an oblation to Neptune. I have heard some gentlemen say, "this was a very unjustifiable proceeding,"—"that if they had gone at noon-day, and in their ordinary habits, and drowned it in the face of the world, it would have been a meritorious, a most glorious action; but, to go in the night, and, much more, in disguise, they thought very inexcusable."

"The revenue was not the consideration before parliament," says Massachusettensis. Let who will believe him. But if it

was not, the danger to America was the same. I take no notice of the idea of a monopoly. If it had been only a monopoly, (though in this light it would have been a very great grievance) it would not have excited, nor, in the opinion of any one, justified the step that was taken. It was an attack upon a fundamental principle of the constitution, and upon that supposition was resisted, after multitudes of petitions to no purpose, and because there was no tribunal in the constitution, from whence redress could have been obtained.

There is one passage so pretty, that I cannot refuse myself the pleasure of transcribing it. "A smuggler and a whig are cousin germans, the offspring of two sisters, avarice and ambition. They had been playing into each other's hands a long time. The smuggler received protection from the whig; and he in his turn received support from the smuggler. The illicit trader now demanded protection from his kinsman; and it would have been unnatural in him to have refused it; and, besides, an opportunity presented of strengthening his own interest."

The wit and beauty of the style in this place, seem to have quite enraptured the lively juvenile imagination of this writer.

The truth of the fact he never regards, any more than the justice of the sentiment. Some years ago, the smugglers might be pretty equally divided between the whigs and the tories. Since that time, they have almost all married into the tory families, for the sake of dispensations and indulgences. If I were to let myself into secret history, I could tell very diverting stories of smuggling tories in New York and Boston. Massachusettensis is quarrelling with some of his best friends. Let him learn more discretion.

We are then told that "the consignees offered to store the tea, under the care of the selectmen, or a committee of the town." This expedient might have answered, if none of the junto, nor any of their connections had been in Boston. But is it a wonder, that the selectmen declined accepting such a deposit? They supposed they should be answerable; and nobody doubted that tories might be found who would not scruple to set fire to the store, in order to make them liable. Besides, if the tea was landed, though only to be stored, the duty must be paid, which, it was thought, was giving up the point.

Another consideration, which had great weight, was, that the

other colonies were grown jealous of Boston, and thought it already deficient in point of punctuality, against the dutied articles; and if the tea was once stored, artifices might be used, if not violence, to disperse it abroad. But if through the continual vigilance and activity of the committee and the people, through a whole winter, this should be prevented, yet one thing was certain, that the tories would write to the other colonies, and to England, thousands of falsehoods concerning it, in order to induce the ministry to persevere, and to sow jealousies, and create divisions among the colonies.

Our acute logician then undertakes to prove the destruction of the tea unjustifiable, even upon the principle of the whigs, that the duty was unconstitutional. The only argument he uses is this, — that "unless we purchase the tea, we shall never pay the duty." This argument is so frivolous, and has been so often confuted and exposed, that if the party had any other, I think they would relinquish this. Where will it carry us? If a duty was laid upon our horses, we may walk; if upon our butcher's meat, we may live upon the produce of the dairy; and if that should be taxed, we may subsist as well as our fellow slaves in Ireland, upon Spanish potatoes and cold water. Were a thousand pounds laid upon the birth of every child, if children are not begotten none will be born; if upon every marriage, no duties will be paid if all the young gentlemen and ladies agree to live bachelors and maidens.

In order to form a rational judgment of the quality of this transaction, and determine whether it was good or evil, we must go to the bottom of this great controversy. If parliament has a right to tax us, and legislate for us in all cases, the destruction of the tea was unjustifiable; but if the people of America are right in their principle, that parliament has no such right, that the act of parliament is null and void, and it is lawful to oppose and resist it, the question then is, whether the destruction was necessary; for every principle of reason, justice, and prudence, in such cases, demands that the least mischief shall be done, the least evil, among a number, shall always be preferred.

All men are convinced that it was impracticable to return it, and rendered so by Mr. Hutchinson and the Boston consignees. Whether to have stored it would have answered the end, or been a less mischief than drowning it, I shall leave to the judg-

ment of the public. The other colonies, it seems, have no scruples about it; for we find that whenever tea arrives in any of them, whether from the East India Company or any other quarter, it never fails to share the fate of that in Boston. All men will agree that such steps ought not to be taken but in cases of absolute necessity, and that such necessity must be very clear. But most people in America now think the destruction of the Boston tea was absolutely necessary, and therefore right and just. It is very true, they say, if the whole people had been united in sentiment, and equally stable in their resolution not to buy or drink it, there might have been a reason for preserving it; but the people here were not so virtuous or so happy. The British ministry had plundered the people by illegal taxes, and applied the money in salaries and pensions, by which devices they had insidiously attached to their party no inconsiderable number of persons, some of whom were of family, fortune, and influence, though many of them were of desperate fortunes, each of whom, however, had his circle of friends, connections, and dependants, who were determined to drink tea, both as evidence of their servility to administration, and their contempt and hatred of the people. These it was impossible to restrain without violence, perhaps bloodshed, certainly without hazarding more than the tea was worth. To this tribe of the *wicked*, they say must be added another, perhaps more numerous, of the *weak;* who never could be brought to think of the consequences of their actions, but would gratify their appetites if they could come at the means. What numbers are there in every community, who have no providence or prudence in their private affairs, but will go on indulging the present appetite, prejudice, or passion, to the ruin of their estates and families, as well as their own health and characters! How much larger is the number of those who have no foresight for the public, or consideration of the freedom of posterity! Such an abstinence from the tea as would have avoided the establishment of a precedent, dependent on the unanimity of the people, was a felicity that was unattainable. Must the wise, the virtuous and worthy part of the community, who constituted a very great majority, surrender their liberty, and involve their posterity in misery, in complaisance to a detestable, though small, party of knaves, and a despicable, though more numerous, company of fools?

If Boston could have been treated like other places, like New York and Philadelphia, the tea might have gone home from thence, as it did from those cities. That inveterate, desperate junto, to whom we owe all our calamities, were determined to hurt us in this, as in all other cases, as much as they could. It is to be hoped they will one day repent and be forgiven; but it is very hard to forgive without repentance. When the news of this event arrived in England, it excited such passions in the minister as nothing could restrain; his resentment was enkindled into revenge, rage, and madness; his veracity was piqued, as his masterpiece of policy proved but a bubble. The bantling was the fruit of a favorite amour, and no wonder that his natural affection was touched, when he saw it despatched before his eyes. His grief and ingenuity, if he had any, were affected at the thought that he had misled the East India Company so much nearer to destruction, and that he had rendered the breach between the kingdom and the colonies almost irreconcilable. His shame was excited because opposition had gained a triumph over him, and the three kingdoms were laughing at him for his obstinacy and his blunders; instead of relieving the company, he had hastened its ruin; instead of establishing the absolute and unlimited sovereignty of parliament over the colonies, he had excited a more decisive denial of, and resistance to it. An election drew nigh, and he dreaded the resentment even of the corrupted electors.

In this state of mind, bordering on despair, he determines to strike a bold stroke. Bernard was near, and did not fail to embrace the opportunity to push the old sytems of the junto. By attacking all the colonies together, by the Stamp Act, and the Paint and Glass Act, they had been defeated. The charter constitution of the Massachusetts Bay, had contributed greatly to both these defeats. Their representatives were too numerous, and too frequently elected, to be corrupted; their people had been used to consider public affairs in their town meetings; their counsellors were not absolutely at the nod of a minister or governor, but were once a year equally dependent on the governor and the two houses. Their grand jurors were elective by the people; their petit jurors were returned merely by lot. Bernard and the junto rightly judged, that by this constitution the people had a check on every branch of power, and, therefore, as long as it lasted, parliamentary taxations, &c. could never be enforced.

Bernard publishes his select letters, and his principles of polity; his son writes in defence of the Quebec bill; hireling garreteers are employed to scribble millions of lies against us, in pamphlets and newspapers; and setters employed in the coffee-houses, to challenge or knock down all the advocates for the poor Massachusetts. It was now determined, instead of attacking the colonies together, though they had been all equally opposed to the plans of the ministry and the claims of parliament, and therefore, upon ministerial principles, equally guilty, to handle them one by one, and to begin with Boston and the Massachusetts. The destruction of the tea was a fine event for scribblers and speechifiers to declaim upon; and there was a hereditary hatred of New England in the minds of many in England, on account of their non-conforming principles. It was likewise thought there was a similar jealousy and animosity in the other colonies against New England; that they would, therefore, certainly desert her; that she would be intimidated and submit; and then the minister, among his own friends, would acquire immortal honor, as the most able, skilful and undaunted statesman of the age.

The port bill, charter bill, murder bill, Quebec bill, making altogether such a frightful system, as would have terrified any people, who did not prefer liberty to life, were all concerted at once; but all this art and violence have not succeeded. This people, under great trials and dangers, have discovered great abilities and virtues, and that nothing is so terrible to them as the loss of their liberties. If these arts and violences are persisted in, and still greater, concerted and carried on against them, the world will see that their fortitude, patience, and magnanimity will rise in proportion.

"Had Cromwell," says our — what shall I call him? "had the guidance of the national ire, your proud capital had been levelled with the dust." Is it any breach of charity to suppose that such an event as this would have been a gratification to this writer? Can we otherwise account for his indulging himself in a thought so diabolical? Will he set up Cromwell as a model for his deified lords, Bute, Mansfield, and North? If he should, there is nothing in the whole history of him so cruel as this. All his conduct in Ireland, as exceptionable as any part of his whole life, affords nothing that can give the least proba-

bility to the idea of this writer. The rebellion in Ireland was most obstinate, and of many years duration; one hundred thousand Protestants had been murdered in a day, in cold blood, by papists, and therefore Cromwell might plead some excuse, that cruel severities were necessary in order to restore any peace to that kingdom. But all this will not justify him; for, as has been observed by a historian, upon his conduct in this instance, "men are not to divest themselves of humanity, and turn themselves into devils, because policy may suggest that they will succeed better as devils than as men!" But is there any parity or similitude between a rebellion of a dozen years standing, in which many battles had been fought, many thousands fallen in war, and one hundred thousand massacred in a day; and the drowning three cargoes of tea? To what strains of malevolence, to what flights of diabolical fury, is not tory rage capable of transporting men?

"The whigs saw their ruin connected with a compliance with the terms of opening the port." They saw the ruin of their country connected with such a compliance, and their own involved in it. But they might have easily voted a compliance, for they were undoubtedly a vast majority, and have enjoyed the esteem and affection of their fellow-slaves to their last hours. Several of them could have paid for the tea and never have felt the loss. They knew they must suffer vastly more than the tea was worth; but they thought they acted for America and posterity; and that they ought not to take such a step without the advice of the colonies. They have declared our cause their own; that they never will submit to a precedent in any part of the united colonies, by which parliament may take away wharves and other lawful estates, or demolish charters; for if they do, they have a moral certainty that, in the course of a few years, every right of Americans will be taken away, and governors and councils, holding at the will of the minister, will be the only legislatives in the colonies.

A pompous account of the addresses of Mr. Hutchinson then follows. They consisted of his relations, his fellow-laborers in the tory vineyard, and persons whom he had raised in the course of four administrations, Shirley's, Pownal's, Bernard's, and his own, to places in the province. Considering the industry that was used, and the vast number of persons in the pro-

vince who had received commissions under government upon his recommendation, the small number of subscribers that was obtained, is among a thousand demonstrations of the unanimity of this people. If it had been thought worth while to have procured a remonstrance against him, fifty thousand subscribers might have been easily found. Several gentlemen of property were among these addressers, and some of fair character; but their acquaintance and friendships lay among the junto and their subalterns entirely. Besides, did these addressers approve the policy or justice of any one of the bills, which were passed the last session of the late parliament? Did they acknowledge the unlimited authority of parliament? The Middlesex magistrates remonstrated against taxation; but they were flattered with hopes, that Mr. Hutchinson would get the Port Bill, &c. repealed; that is, that he would have undone all, which every one but themselves knew he has been doing these fifteen years.

But these patriotic endeavors were defeated. By what? By "an invention of the fertile brain of one of our party agents, called a committee of correspondence. *This is the foulest, subtlest, and most venomous serpent that ever issued from the eggs of sedition.*"

I should rather call it the *ichneumon*, a very industrious, active, and useful animal, which was worshipped in Egypt as a divinity, because it defended the country from the ravages of the crocodiles. It was the whole occupation of this little creature to destroy those wily and ravenous monsters. It crushed their eggs, wherever they laid them, and, with a wonderful address and courage, would leap into their mouths, penetrate their entrails, and never leave until it destroyed them.

If the honor of this invention is due to the gentleman who is generally understood by the "party agent" of Massachusettensis, it belongs to one to whom America has erected a statue in her heart, for his integrity, fortitude, and perseverance in her cause. That the invention itself is very useful and important, is sufficiently clear, from the unlimited wrath of the tories against it, and from the gall which this writer discharges upon it. Almost all mankind have lost their liberties through ignorance, inattention, and disunion. These committees are admirably calculated to diffuse knowledge, to communicate intelligence, and promote unanimity. If the high whigs are generally of such commit-

tees, it is because the freeholders who choose them are such, and therefore prefer their peers. The tories, high or low, if they can make interest enough among the people, may get themselves chosen, and promote the great cause of parliamentary revenues, and the other sublime doctrines and mysteries of toryism. That these committees think themselves "amenable to none," is false; for there is not a man upon any one of them who does not acknowledge himself to hold his place at the pleasure of his constituents, and to be accountable to them, whenever they demand it. If the committee of the town of Boston was appointed for a special purpose, at first, their commission has been renewed from time to time; they have been frequently thanked by the town for their vigilance, activity, and disinterested labors in the public service. Their doings have been laid before the town, and approved of by it. The malice of the tories has several times swelled open their bosoms, and broken out into the most intemperate and illiberal invectives against it; but all in vain. It has only served to show the impotence of the tories, and increase the importance of the committee.

These committees cannot be too religiously careful of the exact truth of the intelligence they receive or convey; nor too anxious for the rectitude and purity of the measures they propose or adopt; they should be very sure that they do no injury to any man's person, property, or character; and they are generally persons of such worth, that I have no doubt of their attention to these rules; and therefore, that the reproaches of this writer are mere slanders.

If we recollect how many states have lost their liberties, merely from want of communication with each other, and union among themselves, we shall think that these committees may be intended by Providence to accomplish great events. What the eloquence and talents of negotiation of Demosthenes himself could not effect, among the states of Greece, might have been effected by so simple a device. Castile, Arragon, Valencia, Majorca, &c. all complained of oppression under Charles V., flew out into transports of rage, and took arms against him. But they never consulted or communicated with each other. They resisted separately, and were separately subdued. Had Don Juan Padilla, or his wife, been possessed of the genius to invent a committee of correspondence, perhaps the liberties of

the Spanish nation might have remained to this hour, without any necessity to have had recourse to arms. Hear the opinion of Dr. Robertson: — "While the spirit of disaffection was so general among the Spaniards, and so many causes concurred in precipitating them into such violent measures in order to obtain the redress of their grievances, it may appear strange that the malecontents in the different kingdoms should have carried on their operations without any mutual concert, or even any intercourse with each other. By uniting their councils and arms, they might have acted both with greater force and with more effect. The appearance of a national confederacy would have rendered it no less respectable among the people, than formidable to the crown; and the emperor, unable to resist such a combination, must have complied with any terms which the members of it should have thought fit to prescribe."

That it is owing to those committees that so many persons have been found to recant and resign, and so many others to fly to the army, is a mistake; for the same things would have taken place if such a committee had never been in being, and such persons would probably have met with much rougher usage. This writer asks, — "Have not these persons as good a right to think and act for themselves as the whigs?" I answer, yes. But if any man, whig or tory, shall take it into his head to think for himself, that he has a right to take my property without my consent, however tender I may be of the right of private judgment and the freedom of thought, this is a point in which I shall be very likely to differ from him, and to think for myself, that I have a right to resist him. If any man should think ever so conscientiously, that the Roman Catholic religion is better than the Protestant, or that the French government is preferable to the British constitution in its purity, Protestants and Britons will not be so tender of that man's conscience as to suffer him to introduce his favorite religion and government. So, the well-bred gentlemen, who are so polite as to think that the charter constitution of this province ought to be abolished, and another introduced, wholly at the will of a minister or the crown, or that our ecclesiastical constitution is bad, and high church ought to come in; few people will be so tender of these consciences, or complaisant to such polite taste, as to suffer the one or the other to be established. There are certain prejudices among the people so strong as to be irresistible.

Reasoning is vain, and opposition idle. For example, there are certain popular maxims and precepts called the ten commandments. Suppose a number of fine gentlemen, superior to the prejudices of education, should discover that these were made for the common people, and are too illiberal for gentlemen of refined taste to observe, and accordingly, should engage in secret, confidential correspondences to procure an act of parliament to abolish the whole decalogue, or to exempt them from all obligation to observe it; if they should succeed, and their letters be detected, such is the force of prejudice and deep habits among the lower sort of people, that it is much to be questioned whether those refined geniuses would be allowed to enjoy themselves in the latitude of their sentiments. I once knew a man who had studied Jacob Behmen, and other mystics, until he conscientiously thought the millennium commenced, and all human authority at an end; that the saints only had a right to property, and to take from sinners any thing they wanted. In this persuasion, he very honestly stole a horse. Mankind pitied the poor man's infirmity, but thought it, however, their duty to confine him, that he might steal no more.

The freedom of thinking was never yet extended in any country so far as the utter subversion of all religion and morality, nor as the abolition of the laws and constitution of the country.

But "are not these persons as closely connected with the interest of their country as the whigs?" I answer, they are not; they have found an interest in opposition to that of their country, and are making themselves rich and their families illustrious by depressing and destroying their country. But "do not their former lives and conversations appear to have been regulated by principles, as much as those of the whigs?" A few of them, it must be acknowledged, until seduced by the bewitching charms of wealth and power, appeared to be men of principle. But taking the whigs and tories on an average, the balance of principle, as well as genius, learning, wit, and wealth, is infinitely in favor of the former. As to some of these fugitives, they are known to be men of no principles at all, in religion, morals, or government.

But the "policy" is questioned, and you are asked if you expect to make converts by it? As to the policy or impolicy of it, I have nothing to say; but we do not expect to make converts of most of those persons by any means whatever, as long

as they have any hopes that the ministry will place and pension them. The instant these hopes are extinguished, we all know they will be converted of course. Converts from places and pensions are only to be made by places and pensions; all other reasoning is idle; these are the *penultima ratio* of the tories, as field-pieces are the *ultima.*

That we are "not unanimous" is certain. But there are nineteen on one side to one on the other, through the province; and ninety-nine out of a hundred of the remaining twentieth part, can be fairly shown to have some sinister private view, to induce them to profess his opinion.

Then we are threatened high, that "this is a changeable world, and time's rolling wheel may ere long bring them uppermost, and, in that case, we should not wish to have them fraught with resentment."

To all this we answer, without ceremony, that they always have been uppermost, in every respect, excepting only the esteem and affection of the people; that they always have been fraught with resentment, (even their cunning and policy have not restrained them,) and we know they always will be; that they have indulged their resentment and malice, in every instance in which they had power to do it; and we know that their revenge will never have other limits than their power.

Then this consistent writer begins to flatter the people; he "appeals to their good sense; he knows they have it;" the same people whom he has so many times represented as mad and foolish.

"I know you are loyal, and friends to good order." This is the same people that, in the whole course of his writings, he has represented as continuing for ten years together in a continual state of disorder, demolishing the chair, board, supreme court, and encouraging all sorts of riots, insurrections, treason, and rebellion. Such are the shifts to which a man is driven, when he aims at carrying a point, not at discovering truth!

The people are then told that "they have been insidiously taught to believe, that Great Britain is rapacious, cruel, and vindictive, and envies us the inheritance purchased by the sweat and blood of our ancestors." The people do not believe this; they will not believe it. On the contrary, they believe, if it was not for scandals constantly transmitted from this province by the

tories, the nation would redress our grievances. Nay, as little as they reverence the ministry, they even believe that the lords North, Mansfield, and Bute, would relieve them, and would have done it long ago, if they had known the truth. The moment this is done, "long live our gracious king, and happiness to Britain," will resound from one end of the province to the other; but it requires very little foresight to determine, that no other plan of governing the province and the colonies will ever restore a harmony between two countries, but desisting from the plan of taxing them and interfering with their internal concerns, and returning to that system of colony administration, which nature dictated, and experience for one hundred and fifty years found useful.

NO. VII.

Our rhetorical magician, in his paper of January the 9th, continues to *wheedle:* You want nothing but "to know the true state of facts, to rectify whatever is amiss." He becomes an advocate for the poor of Boston! is for making great allowance for the whigs. "The whigs are too valuable a part of the community to lose. He would not draw down the vengeance of Great Britain. He shall become an advocate for the leading whigs," &c. It is in vain for us to inquire after the *sincerity* or *consistency* of all this. It is agreeable to the precept of Horace:

Irritat, mulcet, falsis terroribus implet,
Ut magus,

And that is all he desires.

After a long discourse, which has nothing in it but what has been answered already, he comes to a great subject indeed, the British constitution; and undertakes to prove, that "the authority of parliament extends to the colonies."

Why will not this writer state the question fairly? The whigs allow that, from the necessity of a case not provided for by common law, and to supply a defect in the British dominions, which there undoubtedly is, if they are to be governed only by that law, America has all along consented, still consents, and ever will consent, that parliament, being the most powerful legislature in the dominions, should regulate the trade of the dominions.

This is founding the authority of parliament to regulate our trade, upon *compact* and *consent* of the colonies, not upon any principle of common or statute law; not upon any original principle of the English constitution; not upon the principle that parliament is the supreme and sovereign legislature over them in all cases whatsoever. The question is not, therefore, whether the authority of parliament extends to the colonies in any case, for it is admitted by the whigs, that it does in that of commerce; but whether it extends in all cases.

We are then detained with a long account of the three simple forms of government; and are told, that "the British constitution, consisting of king, lords, and commons, is formed upon the principles of monarchy, aristocracy, and democracy, in due proportion; that it includes the principal excellences, and excludes the principal defects of the other kinds of government, — the most perfect system that the wisdom of ages has produced, and Englishmen glory in being subject to, and protected by it."

Then we are told, "that the colonies are a part of the British empire." But what are we to understand by this? Some of the colonies, most of them, indeed, were settled before the kingdom of Great Britain was brought into existence. The union of England and Scotland was made and established by act of parliament in the reign of Queen Anne, and it was this union and statute which erected the kingdom of Great Britain. The colonies were settled long before, in the reigns of the Jameses and Charleses. What authority over them had Scotland? Scotland, England, and the colonies were all under one king before that; the two crowns of England and Scotland united on the head of James I., and continued united on that of Charles I., when our first charter was granted. Our charter, being granted by him, who was king of both nations, to our ancestors, most of whom were *post nati*, born after the union of the two crowns, and consequently, as was adjudged in Calvin's case, free, natural subjects of Scotland, as well as England, — had not the king as good a right to have governed the colonies by his Scottish, as by his English parliament, and to have granted our charters under the seal of Scotland, as well as that of England?

But to wave this. If the English parliament were to govern us, where did they get the right, without our consent, to take the Scottish parliament into a participation of the government over

us? When this was done, was the American share of the democracy of the constitution consulted? If not, were not the Americans deprived of the benefit of the democratical part of the constitution? And is not the democracy as essential to the English constitution as the monarchy or aristocracy? Should we have been more effectually deprived of the benefit of the British or English constitution, if one or both houses of parliament, or if our house and council, had made this union with the two houses of parliament in Scotland, without the king?

If a new constitution was to be formed for the whole British dominions, and a supreme legislature coextensive with it, upon the general principles of the English constitution, an equal mixture of monarchy, aristocracy, and democracy, let us see what would be necessary. England has six millions of people, we will say; America had three. England has five hundred members in the house of commons, we will say; America must have two hundred and fifty. Is it possible she should maintain them there, or could they at such a distance know the state, the sense, or exigencies of their constituents? Ireland, too, must be incorporated, and send another hundred or two of members. The territory in the East Indies and West India Islands must send members. And after all this, every navigation act, every act of trade must be repealed. America, and the East and West Indies, and Africa too, must have equal liberty to trade with all the world, that the favored inhabitants of Great Britain have now. Will the ministry thank Massachusettensis for becoming an advocate for such a union, and incorporation of all the dominions of the King of Great Britain? Yet, without such a union, a legislature which shall be sovereign and supreme in all cases whatsoever, and coextensive with the empire, can never be established upon the general principles of the English constitution which Massachusettensis lays down, namely,—an equal mixture of monarchy, aristocracy, and democracy. Nay, further, in order to comply with this principle, this new government, this mighty colossus, which is to bestride the narrow world, must have a house of lords, consisting of Irish, East and West Indian, African, American, as well as English and Scottish noblemen; for the nobility ought to be scattered about all the dominions, as well as the representatives of the commons. If in twenty years more America should have six millions of inhabitants, as there

is a boundless territory to fill up, she must have five hundred representatives. Upon these principles, if in forty years she should have twelve millions, a thousand; and if the inhabitants of the three kingdoms remain as they are, being already full of inhabitants, what will become of your supreme legislative? It will be translated, crown and all, to America. This is a sublime system for America. It will flatter those ideas of independency which the tories impute to them, if they have any such, more than any other plan of independency that I have ever heard projected.

"The best writers upon the law of nations tell us, that when a nation takes possession of a distant country, and settles there, that country, though separated from the principal establishment, or mother country, naturally becomes a part of the state, equal with its ancient possessions." We are not told who these "best writers" are. I think we ought to be introduced to them. But their meaning may be no more, than that it is best they should be incorporated with the ancient establishment by contract, or by some new law and institution, by which the new country shall have equal right, powers, and privileges, as well as equal protection, and be under equal obligations of obedience, with the old. Has there been any such contract between Britain and the colonies? Is America incorporated into the realm? Is it a part of the realm? Is it a part of the kingdom? Has it any share in the legislative of the realm? The constitution requires that every foot of land should be represented in the third estate, the democratical branch of the constitution. How many millions of acres in America, how many thousands of wealthy landholders, have no representatives there?

But let these "best writers" say what they will, there is nothing in the law of nations, which is only the law of right reason applied to the conduct of nations, that requires that emigrants from a state should continue, or be made, a part of the state.

The practice of nations has been different. The Greeks planted colonies, and neither demanded nor pretended any authority over them; but they became distinct, independent commonwealths. The Romans continued their colonies under the jurisdiction of the mother commonwealth; but, nevertheless, they allowed them the privileges of cities. Indeed, that sagacious city seems to have been aware of difficulties similar to those under which Great

Britain is now laboring. She seems to have been sensible of the impossibility of keeping colonies planted at great distances, under the absolute control of her *senatus-consulta.* Harrington tells us, that "the commonwealth of Rome, by planting colonies of its citizens within the bounds of Italy, took the best way of propagating itself and naturalizing the country; whereas, if it had planted such colonies without the bounds of Italy, it would have alienated the citizens, and given a root to liberty abroad, that might have sprung up foreign, or savage, and hostile to her; *wherefore it never made any such dispersion of itself and its strength* till it was under the yoke of the emperors, who, disburdening themselves of the people, as having less apprehension of what they could do abroad than at home, took a contrary course."* But these Italian cities, although established by decrees of the senate of Rome, to which the colonist was always party, either as a Roman citizen about to emigrate, or as a conquered enemy treating upon terms, were always allowed all the rights of Roman citizens, and were governed by senates of their own. It was the policy of Rome to conciliate her colonies by allowing them equal liberties with her citizens. Witness the example of the Privernates. This people had been conquered, and, complaining of oppressions, revolted. At last they sent ambassadors to Rome to treat of peace. The senate was divided in opinion. Some were for violent, others for lenient measures. In the course of the debate, a senator, whose opinion was for *bringing them to his feet*, proudly asked one of the ambassadors what punishment he thought his countrymen deserved. "*Eam, inquit, quam merentur, qui se libertate dignos censent.*" That punishment which those deserve who think themselves worthy of liberty. Another senator, seeing that the *ministerial members* were exasperated with the honest answer, in order to divert their anger, asks another question: — What if we remit all punishment? What kind of a peace may we hope for with you? "*Si bonam dederitis, inquit, et fidam et perpetuam; si malam, haud diuturnam.*" If you give us a just peace, it will be faithfully observed, and perpetually; but if a bad one, it will not last long. The *ministerial* senators all on fire at this answer, cried out sedition and rebellion; but the wiser majority decreed, — "*Viri et liberi, vocem*

* Oceana, p. 43.

auditam; an credi posse ullum populum, aut hominem denique, in ea conditione, cujus eum pœniteat, diutius quam necesse sit mansurum? Ibi pacem esse fidam, ubi voluntarii pacati sint; neque eo loco, ubi servitutem esse velint, fidem sperandam esse." That they had heard the voice of a man, and a son of liberty; that it was not natural or credible that any people, or any man, would continue longer than necessity should compel him in a condition that grieved and displeased him. A faithful peace was to be expected from men whose affections were conciliated; nor was any kind of fidelity to be expected from slaves. The consul exclaimed, — "*Eos demum, qui nihil præterquam de libertate cogitent, dignos esse qui Romani fiant.*" That they who regarded nothing so much as their liberty, deserved to be Romans. "*Itaque et in senatu causam obtinuere; et ex auctoritate patrum, latum ad populum est, ut Privernatibus civitas daretur.*" Therefore the Privernates obtained their cause in the senate; and it was, by the authority of those fathers, recommended to the people, that the privileges of a city should be granted them. The practice of free nations only can be adduced, as precedents of what the law of nature has been thought to dictate upon this subject of colonies. Their practice is different. The senate and people of Rome did not interfere commonly by making laws for their colonies, but left them to be ruled by governors and senates. Can Massachusettensis produce from the whole history of Rome, or from the Digest, one example of a *senatus-consultum*, or a *plebiscitum*, laying taxes on the colony?

Having mentioned the wisdom of the Romans, for not planting colonies out of Italy, and their reasons for it, I cannot help recollecting an observation of Harrington: — "For the colonies in the Indies," says he, "they are yet babes, that cannot live without sucking the breasts of their mother cities, but such as I mistake, if, when they come of age, they do not wean themselves, which causes me to wonder at princes that delight to be exhausted in that way." This was written one hundred and twenty years ago; the colonies are now nearer manhood than ever Harrington foresaw they would arrive in such a period of time. Is it not astonishing, then, that any British minister should ever have considered this subject so little as to believe it possible for him to new-model all our governments, to tax us by an authority that never taxed us before, and subdue us to an implicit obedi-

ence to a legislature that millions of us scarcely ever thought any thing about?

I have said, that the practice of free governments alone can be quoted with propriety to show the sense of nations. But the sense and practice of nations is not enough. Their practice must be reasonable, just, and right, or it will not govern Americans.

Absolute monarchies, whatever their practice may be, are nothing to us; for, as Harrington observes, "Absolute monarchy, as that of the Turks, neither plants its people at home nor abroad, otherwise than as tenants for life or at will; wherefore, its national and provincial government is all one."

I deny, therefore, that the practice of free nations, or the opinions of the best writers upon the law of nations, will warrant the position of Massachusettensis,[1] that, "when a nation takes possession of a distant territory, that becomes a part of the state equally with its ancient possessions." The practice of free nations and the opinions of the best writers are in general on the contrary.

I agree, that "two supreme and independent authorities cannot exist in the same state," any more than two supreme beings in one universe; and, therefore, I contend, that our provincial legislatures are the only supreme authorities in our colonies. Parliament, notwithstanding this, may be allowed an authority supreme and sovereign over the ocean, which may be limited by the banks of the ocean, or the bounds of our charters; our charters give us no authority over the high seas. Parliament has our consent to assume a jurisdiction over them. And here is a

[1] "The colonies are a part of the British empire. The best writers upon the law of nations tell us, that when a nation takes possession of a distant country, and settles there, that country, though separated from the principal establishment, or mother country, naturally becomes a part of the state, equal with its ancient possessions. Two supreme or independent authorities cannot exist in the same state. It would be what is called *imperium in imperio*, the height of political absurdity. The analogy between the political and human body is great. Two independent authorities in a state would be like two distinct principles of volition and action in the human body, dissenting, opposing, and destroying each other. If, then, we are a part of the British empire, we must be subject to the supreme power of the state, which is vested in the estates of parliament, notwithstanding each of the colonies have legislative and executive powers of their own, delegated or granted to them, for the purposes of regulating their own internal police, which are subordinate to, and must necessarily be subject to the checks, control, and regulation of the supreme authority." *Massachusettensis.*

line fairly drawn between the rights of Britain and the rights of the colonies, namely, the banks of the ocean, or low-water mark; the line of division between common law, and civil or maritime law. If this is not sufficient, — if parliament are at a loss for any principle of natural, civil, maritime, moral, or common law, on which to ground any authority over the high seas, the Atlantic especially, let the colonies be treated like reasonable creatures, and they will discover great ingenuity and modesty. The acts of trade and navigation might be confirmed by provincial laws, and carried into execution by our own courts and juries, and in this case, illicit trade would be cut up by the roots forever. I knew the smuggling tories in New York and Boston would cry out against this, because it would not only destroy their profitable game of smuggling, but their whole place and pension system. But the whigs, that is, a vast majority of the whole continent, would not regard the smuggling tories. In one word, if public principles, and motives, and arguments were alone to determine this dispute between the two countries, it might be settled forever in a few hours; but the everlasting clamors of prejudice, passion, and private interest drown every consideration of that sort, and are precipitating us into a civil war.

"If, then, we are a part of the British empire, we must be subject to the supreme power of the state, which is vested in the estates in parliament."

Here, again, we are to be conjured out of our senses by the magic in the words "British empire," and "supreme power of the state." But, however it may sound, I say we are not a part of the British empire; because the British government is not an empire. The governments of France, Spain, &c. are not empires, but monarchies, supposed to be governed by fixed fundamental laws, though not really. The British government is still less entitled to the style of *an empire*. It is a limited monarchy. If Aristotle, Livy, and Harrington knew what a republic was, the British constitution is much more like a republic than an empire. They define a republic to be a *government of laws, and not of men.* If this definition be just, the British constitution is nothing more nor less than a republic, in which the king is first magistrate. This office being hereditary, and being possessed of such ample and splendid prerogatives, is no objection to the

government's being a republic, as long as it is bound by fixed laws, which the people have a voice in making, and a right to defend. An empire is a despotism, and an emperor a despot, bound by no law or limitation but his own will; it is a stretch of tyranny beyond absolute monarchy. For, although the will of an absolute monarch is law, yet his edicts must be registered by parliaments. Even this formality is not necessary in an empire. There the maxim is *quod principi placuit legis habet vigorem*, even without having that will and pleasure recorded. There are but three empires now in Europe, the German or Holy Roman, the Russian, and the Ottoman.

There is another sense, indeed, in which the word *empire* is used, in which it may be applied to the government of Geneva, or any other republic, as well as to monarchy or despotism. In this sense it is synonymous with *government*, *rule*, or *dominion*. In this sense we are within the dominion, rule, or government of the King of Great Britain.

The question should be, whether we are a part of the kingdom of Great Britain. This is the only language known in English laws. We are not then a part of the British kingdom, realm, or state; and therefore the supreme power of the kingdom, realm, or state is not, upon these principles, the supreme power of us. That "supreme power over America is vested in the estates in parliament," is an affront to us; for there is not an acre of American land represented there; there are no American estates in parliament.

To say, that we "must be" subject, seems to betray a consciousness that we are not by any law, or upon any principles but those of mere power; and an opinion that we ought to be, or that it is necessary that we should be. But if this should be admitted for argument's sake only, what is the consequence? The consequences that may fairly be drawn are these; that Britain has been imprudent enough to let colonies be planted, until they are become numerous and important, without ever having wisdom enough to concert a plan for their government, consistent with her own welfare; that now it is necessary to make them submit to the authority of parliament; and, because there is no principle of law, or justice, or reason, by which she can effect it, therefore she will resort to war and conquest — to the maxim, *delenda est Carthago*. These are the consequences,

according to this writer's idea. We think the consequences are, that she has, after one hundred and fifty years, discovered a defect in her government, which ought to be supplied by some just and reasonable means, that is, by the consent of the colonies; for metaphysicians and politicians may dispute forever, but they will never find any other moral principle or foundation of rule or obedience, than the consent of governors and governed. She has found out that the great machine will not go any longer without a new wheel. She will make this herself. We think she is making it of such materials and workmanship as will tear the whole machine to pieces. We are willing, if she can convince us of the necessity of such a wheel, to assist with artists and materials in making it, so that it may answer the end. But she says, we shall have no share in it; and if we will not let her patch it up as she pleases, her Massachusettensis and other advocates tell us, she will tear it to pieces herself, by cutting our throats. To this kind of reasoning, we can only answer, that we will not stand still to be butchered. We will defend our lives as long as Providence shall enable us.

"It is beyond doubt, that it was the sense both of the *parent country* and *our ancestors*, that they were to remain subject to parliament."[1]

This has been often asserted, and as often contradicted and fully confuted. The confutation may not, however, have come to every eye which has read this newspaper.

The public acts of kings and ministers of state, in that age when our ancestors emigrated, which were not complained of, remonstrated and protested against by the commons, are looked upon as sufficient proof of the "sense" of the parent country.

The charter to the treasurer and company of Virginia, 23 May, 1609, grants ample powers of government, legislative, executive, and judicial, and then contains an express covenant, "to and with the said treasurer and company, their successors, factors, and assigns, that they, and every of them, shall be free

[1] "It is beyond a doubt, that it was the sense both of the parent country, and our ancestors, that they were to remain subject to parliament. It is evident, from the charter itself; and this authority has been exercised by parliament from time to time, almost ever since the first settlement of the country, and has been expressly acknowledged by our provincial legislatures. It is not less our interest than our duty, to continue subject to the authority of parliament, which will be more fully considered hereafter." *Massachusettensis.*

from all taxes and impositions forever, upon any goods or merchandises, at any time or times hereafter, either upon importation thither, or exportation from thence, into our realm of England, or into any other of our realms or dominions."

I agree with this writer, that the authority of a supreme legislature includes the right of taxation. Is not this quotation, then, an irresistible proof, that it was not "the sense of King James or his ministers, or of the ancestors of the Virginians, that they were to remain subject to parliament as a supreme legislature?"

After this, James issued a proclamation recalling the patent, but this was never regarded. Then Charles issued another proclamation, which produced a remonstrance from Virginia, which was answered by a letter from the lords of the privy council, 22 July, 1634, containing the royal assurance, that "all their estates, trade, freedom, and privileges should be enjoyed by them in as extensive a manner as they enjoyed them before those proclamations."

Here is another evidence of the sense of the king and his ministers.

Afterwards, parliament sent a squadron of ships to Virginia; the colony rose in open resistance, until the parliamentary commissioners granted them conditions, that they should enjoy the privileges of Englishmen; that their assembly should transact the affairs of the colonies; that they should have a free trade to all places and nations, as the people of England; and fourthly, that "Virginia shall be free from all *taxes*, customs, and impositions whatever, and none to be imposed on them without consent of the grand assembly; and so that neither forts nor castles be erected, or garrisons maintained, without their consent."

One would think this was evidence enough of the sense both of the parent country and our ancestors.

After the acts of navigation were passed, Virginia sent agents to England, and a remonstrance against those acts. Charles, in answer, sent a declaration under the privy seal, 19 April, 1676, affirming "that taxes ought not to be laid upon the inhabitants and proprietors of the colony, but by the common consent of the general assembly; except such impositions as the parliament should lay on the commodities imported into England from

the colony." And he ordered a charter under the great seal, to secure this right to the Virginians.

What becomes of the "sense of the parent country and our ancestors"? for the ancestors of the Virginians are our ancestors, when we speak of ourselves as Americans.

From Virginia let us pass to Maryland. Charles I., in 1633, gave a charter to the Baron of Baltimore, containing ample powers of government, and this express covenant: "to and with the said Lord Baltimore, his heirs and assigns, that we, our heirs and successors, shall at no time hereafter, set or make, or cause to be set, any imposition, custom, or other taxation, rate, or contribution whatsoever, in and upon the dwellings and inhabitants of the aforesaid province, for their lands, tenements, goods, or chattels within the said province; or to be laden or unladen, within the ports or harbors of the said province."

What, then, was the "sense of the parent country and the ancestors" of Maryland? But if, by "our ancestors," he confines his idea to New England, or this province, let us consider. The first planters of Plymouth were "our ancestors" in the strictest sense. They had no charter or patent for the land they took possession of; and derived no authority from the English parliament or crown to set up their government. They purchased land of the Indians, and set up a government of their own, on the simple principle of nature; and afterwards purchased a patent for the land of the council at Plymouth; but never purchased any charter for government, of the crown or the king, and continued to exercise all the powers of government, legislative, executive, and judicial, upon the plain ground of an original contract among independent individuals for sixty-eight years, that is, until their incorporation with Massachusetts by our present charter. The same may be said of the colonies which emigrated to Say-Brook, New Haven, and other parts of Connecticut. They seem to have had no idea of dependence on parliament, any more than on the conclave. The Secretary of Connecticut has now in his possession an original letter from Charles II. to that colony, in which he considers them rather as friendly allies, than as subjects to his English parliament; and even requests them to pass a law in their assembly relative to piracy.

The sentiments of your ancestors in the Massachusetts, may be learned from almost every ancient paper and record. It

would be endless to recite all the passages, in which it appears that they thought themselves exempt from the authority of parliament, not only in the point of taxation, but in all cases whatsoever. Let me mention one. Randolph, one of the predecessors of Massachusettensis, in a representation to Charles II., dated 20 September, 1676, says, "I went to visit the governor at his house, and, among other discourse, I told him, I took notice of several ships that were arrived at Boston, some since my being there, from Spain, France, Straits, Canaries, and other parts of Europe, contrary to your majesty's laws for encouraging navigation and regulating the trade of the plantations. He freely declared to me, that the law made by your majesty and your parliament, obligeth them in nothing but what consists with the interest of that colony; that the legislative power is and abides in them solely to act and make laws by virtue of a charter from your majesty's royal father." Here is a positive assertion of an exemption from the authority of parliament, even in the case of the regulation of trade.

Afterwards, in 1677, the general court passed a law which shows the sense of our ancestors in a very strong light. It is in these words: —

"This court being informed, by letters received this day from our messengers, of his majesty's expectation, that the acts of trade and navigation be exactly and punctually observed by this his majesty's colony, his pleasure therein not having before now been signified unto us, either by express from his majesty or any of his ministers of state:

"It is therefore hereby ordered, and by the authority of this court enacted, that henceforth, all masters of ships, ketches, or other vessels, of greater or lesser burthen, arriving in, or sailing from any of the ports in this jurisdiction, do, without coven or fraud, yield faithful and constant obedience unto, and observation of, all the said acts of navigation and trade, on penalty of suffering such forfeitures, loss, and damage, as in the said acts are particularly expressed. And the governor and council, and all officers commissionated and authorized by them, are hereby ordered and required to see to the strict observation of the said acts."

As soon as they had passed this law, they wrote a letter to their agent, in which they acknowledge they had not conformed

to the acts of trade; and they say, they "apprehended them to be an invasion of the rights, liberties, and properties of the subjects of his majesty in the colony, they not being represented in parliament; and, according to the usual sayings of the learned in the law, *the laws of England were bounded within the four seas, and did not reach America.* However, as his majesty had signified his pleasure that these acts should be observed in the Massachusetts, they had made provision, by a law of the colony, that they should be strictly attended to from time to time, although it greatly discouraged trade, and was a great damage to his majesty's plantation."

Thus, it appears, that the ancient Massachusettensians and Virginians had precisely the same sense of the authority of parliament, namely,—that it had none at all; and the same sense of the necessity that, by the voluntary act of the colonies—their free, cheerful consent—it should be allowed the power of regulating trade; and this is precisely the idea of the late congress at Philadelphia, expressed in the fourth proposition in their Bill of Rights.

But this was the sense of the parent country, too, at that time; for King Charles II., in a letter to the Massachusetts, after this law had been laid before him, has these words: "We are informed that you have lately made *some good provision* for observing the acts of trade and navigation, which is well pleasing unto us." Had he or his ministers an idea that parliament was the sovereign legislative over the colony? If he had, would he not have censured this law, as an insult to that legislative?

I sincerely hope we shall see no more such round affirmations, that "it was the sense of the parent country and our ancestors, that they were to remain subject to parliament." So far from thinking themselves subject to parliament, it is clear that, during the interregnum, it was their desire and design to have been a free commonwealth, an independent republic; and after the restoration, it was with the utmost reluctance that, in the course of sixteen or seventeen years, they were brought to take the oaths of allegiance; and for some time after this, they insisted upon taking an oath of fidelity to the country, before that of allegiance to the king.

That "it is evident, from the charter itself, that they were to

remain subject to parliament," is very unaccountable, when there is not one word in either charter concerning parliament.

That the authority of parliament "has been exercised almost ever since the first settlement of the country," is a mistake; for there is no instance, until the first Navigation Act, which was in 1660, more than forty years after the first settlement. This act was never executed nor regarded until seventeen years afterwards, and then it was not executed as an act of parliament, but as a law of the colony, to which the king agreed.

This "has been expressly acknowledged by our provincial legislatures." There is too much truth in this. It has been twice acknowledged by our house of representatives, that parliament was the supreme legislative; but this was directly repugnant to a multitude of other votes, by which it was denied. This was in conformity to the distinction between taxation and legislation, which has since been found to be a distinction without a difference.

When a great question is first started, there are very few, even of the greatest minds, which suddenly and intuitively comprehend it, in all its consequences.

It is both "our interest and our duty to continue subject to the authority of parliament," as far as the regulation of our trade, if it will be content with that, but no longer.

"If the colonies are not subject to the authority of parliament, Great Britain and the colonies must be distinct states, as completely so as England and Scotland were before the union, or as Great Britain and Hanover are now."[1] There is no need of being startled at this consequence. It is very harmless. There is no absurdity at all in it. Distinct states may be united under one king. And those states may be further cemented and united together by a treaty of commerce. This is the case. We have, by our own express consent, contracted to observe the Navigation

[1] "The principal argument against the authority of parliament is this: the Americans are entitled to all the privileges of an Englishman; it is the privilege of an Englishman to be exempt from all laws, that he does not consent to in person, or by representative; the Americans are not represented in parliament, and therefore are exempt from acts of parliament, or in other words, not subject to its authority. This appears specious, but leads to such absurdities as demonstrate its fallacy. If the colonies are not subject to the authority of parliament, Great Britain and the colonies must be distinct states, as completely so as England and Scotland were before the union, or as Great Britain and Hanover are now." *Massachusettensis.*

Act, and by our implied consent, by long usage and uninterrupted acquiescence, have submitted to the other acts of trade, however grievous some of them may be. This may be compared to a treaty of commerce, by which those distinct states are cemented together, in perpetual league and amity. And if any further ratifications of this pact or treaty are necessary, the colonies would readily enter into them, provided their other liberties were inviolate.

That "the colonies owe no allegiance to any imperial crown," provided such a crown involves in it a house of lords and a house of commons, is certain. Indeed, we owe no allegiance to any crown at all. We owe allegiance to the person of his majesty, King George III., whom God preserve. But allegiance is due universally, both from Britons and Americans to the person of the king, not to his crown; to his natural, not his politic capacity, as I will undertake to prove hereafter, from the highest authorities, and the most solemn adjudications, which were ever made within any part of the British dominions.

If his majesty's title to the crown is "derived from an act of parliament, made since the settlement of these colonies," it was not made since the date of our charter. Our charter was granted by King William and Queen Mary, three years after the revolution; and the oaths of allegiance are established by a law of the province. So that our allegiance to his majesty is not due by virtue of any act of a British parliament, but by our own charter and province laws. It ought to be remembered that there was a revolution here, as well as in England, and that we, as well as the people of England, made an original, express contract with King William.

If it follows from thence, that he appears "King of Massachusetts, King of Rhode Island, King of Connecticut, &c."[1] this

[1] "Let us wave this difficulty, and suppose allegiance due from the colonies to the person of the King of Great Britain. He then appears in a new capacity, of King of America, or rather in several new capacities, of King of Massachusetts, King of Rhode Island, King of Connecticut, &c. &c. For if our connection with Great Britain by the parliament be dissolved, we shall have none among ourselves, but each colony become as distinct from the others, as England was from Scotland before the union. Some have supposed that each state, having one and the same person for its king, is a sufficient connection. Were he an absolute monarch, it might be; but in a mixed government it is no union at all. For as the king must govern each state, by its parliament, those several parliaments would pursue the particular interest of its own state; and however well disposed

is no absurdity at all. He will appear in this light, and does appear so, whether parliament has authority over us or not. He is King of Ireland, I suppose, although parliament is allowed to have authority there. As to giving his majesty those titles, I have no objection at all; I wish he would be graciously pleased to assume them.

The only proposition in all this writer's long string of pretended absurdities, which he says follows from the position that we are distinct states, is this: — That "as the king must govern each state by its parliament, those several parliaments would pursue the particular interest of its own state; and however well disposed the king might be to pursue a line of interest that was common to all, the checks and control that he would meet with would render it impossible." Every argument ought to be allowed its full weight; and therefore candor obliges me to acknowledge, that here lies all the difficulty that there is in this whole controversy. There has been, from first to last, on both sides of the Atlantic, an idea, an apprehension, that it was necessary there should be some superintending power, to draw together all the wills, and unite all the strength of the subjects in all the dominions, in case of war, and in the case of trade. The necessity of this, in case of trade, has been so apparent, that, as has often been said, we have consented that parliament should exercise such a power. In case of war, it has by some been thought necessary. But in fact and experience, it has not been found so. What though the proprietary colonies, on account of disputes with the proprietors, did not come in so early to the assistance of the general cause in the last war as they ought, and perhaps one of them not at all? The inconveniences of this were small, in comparison of the absolute ruin to the liberties of all which must follow the submission to parliament, in all cases, which would be giving up all the popular limitations upon the government. These inconveniences fell chiefly upon New England. She was necessitated to greater exertions; but she had rather suffer these again and again than others infinitely

the king might be to pursue a line of interest, that was common to all, the checks and control that he would meet with, would render it impossible. If the King of Great Britain has really these new capacities, they ought to be added to his titles; and another difficulty will arise; the prerogatives of these new crowns have never been defined or limited." *Massachusettensis.*

greater. However, this subject has been so long in contemplation, that it is fully understood now in all the colonies; so that there is no danger, in case of another war, of any colony's failing of its duty.

But, admitting the proposition in its full force, that it is absolutely necessary there should be a supreme power, coextensive with all the dominions, will it follow that parliament, as now constituted, has a right to assume this supreme jurisdiction? By no means.

A union of the colonies might be projected, and an American legislature; for, if America has three millions of people, and the whole dominions, twelve millions, she ought to send a quarter part of all the members to the house of commons; and, instead of holding parliaments always at Westminster, the haughty members for Great Britain must humble themselves, one session in four, to cross the Atlantic, and hold the parliament in America.

There is no avoiding all inconveniences in human affairs. The greatest possible, or conceivable, would arise from ceding to parliament power over us without a representation in it. The next greatest would accrue from any plan that can be devised for a representation there. The least of all would arise from going on as we began, and fared well for one hundred and fifty years, by letting parliament regulate trade, and our own assemblies all other matters.

As to "the prerogatives not being defined, or limited," it is as much so in the colonies as in Great Britain, and as well understood, and as cheerfully submitted to in the former as the latter.

But "where is the British constitution, that we all agree we are entitled to?"[1] I answer, if we enjoy, and are entitled to

[1] "But let us suppose the same prerogatives inherent in the several American crowns as are in the imperial crown of Great Britain, where shall we find the British constitution, that we all agree we are entitled to? We shall seek for it in vain in our provincial assemblies. They are but faint sketches of the estates of parliament. The houses of representatives, or burgesses, have not all the powers of the house of commons; in the charter governments, they have no more than what is expressly granted by their several charters. The first charters granted to this province, did not empower the assembly to tax the people at all. Our council boards are as destitute of the constitutional authority of the house of lords, as their several members are of the noble independence and splendid appendages of peerage. The house of peers is the bulwark of the British constitution, and through successive ages has withstood the shocks of monar-

more liberty than the British constitution allows, where is the harm? Or if we enjoy the British constitution in greater purity and perfection than they do in England, as is really the case, whose fault is this? Not ours.

We may find all the blessings of this constitution "in our provincial assemblies." Our houses of representatives have, and ought to exercise every power of the house of commons. The first charter to this colony is nothing to the present argument; but it did grant a power of taxing the people, implicitly, though not in express terms. It granted all the rights and liberties of Englishmen, which include the power of taxing the people.

"Our council boards" in the royal governments, "are destitute of the noble independence and splendid appendages of peerage." Most certainly, they are the meanest creatures and tools in the political creation, dependent every moment for their existence on the tainted breath of a prime minister. But they have the authority of the house of lords, in our little models of the English constitution; and it is this which makes them so great a grievance. The crown has really two branches of our legislature in its power. Let an act of parliament pass at home, putting it in the power of the king to remove any peer from the house of lords at his pleasure, and what will become of the British constitution? It will be overturned from the foundation. Yet we are perpetually insulted by being told, that making our council by mandamus brings us nearer to the British constitution. In this province, by charter, the council certainly hold their seats for the year, after being chosen and approved, independent of both the other branches. For their creation, they are equally obliged to both the other branches; so that there is little or no bias in favor of either; if any, it is in favor of the prerogative. In short, it is not easy, without an hereditary nobility, to constitute a council more independent, more nearly resembling the house of lords, than the council of this province has ever been by charter.

But perhaps it will be said, that we are to enjoy the British constitution in our supreme legislature, the parliament, not in our provincial legislatures. To this I answer, if parliament is to be

chy, and the sappings of democracy; and the constitution gained strength by the conflict. Thus, the supposition of our being independent states, or exempt from the authority of parliament, destroys the very idea of our having a British constitution." *Massachusettensis.*

our supreme legislature, we shall be under a complete oligarchy or aristocracy, not the British constitution, which this writer himself defines a mixture of monarchy, aristocracy, and democracy. For king, lords, and commons, will constitute one great oligarchy, as they will stand related to America, as much as the decemvirs did in Rome; with this difference for the worse, that our rulers are to be three thousand miles off. The definition of an oligarchy is a government by a number of grandees, over whom the people have no control. The States of Holland were once chosen by the people frequently, then chosen for life; now they are not chosen by the people at all. When a member dies, his place is filled up, not by the people he is to represent, but by the States. Is not this depriving the Hollanders of a free constitution, and subjecting them to an aristocracy, or oligarchy? Will not the government of America be like it? Will not representatives be chosen for them by others, whom they never saw nor heard of? If our provincial constitutions are in any respect imperfect, and want alteration, they have capacity enough to discern it, and power enough to effect it, without the interposition of parliament. There never was an American constitution attempted by parliament before the Quebec bill, and Massachusetts bill. These are such *samples* of what they may, and probably will be, that few Americans are in love with them. However, America will never allow that parliament has any authority to alter their constitution at all. She is wholly penetrated with a sense of the necessity of resisting it at all hazards. And she would resist it, if the constitution of the Massachusetts had been altered as much for *the better* as it is for the worse. The question we insist on most is, not whether the alteration is for the better or not, but whether parliament has any right to make any alteration at all. And it is the universal sense of America, that it has none.

We are told, that "the provincial constitutions have no principle of stability within themselves."[1] This is so great a mis-

[1] "The provincial constitutions, considered as subordinate, are generally well adapted to those purposes of government for which they were intended; that is, to regulate the internal police of the several colonies; but have no principle of stability within themselves; they may support themselves in moderate times, but would be merged by the violence of turbulent ones, and the several colonies become wholly monarchical or wholly republican, were it not for the checks, controls, regulations, and supports, of the supreme authority of the empire."
Massachusettensis.

take, that there is not more order or stability in any government upon the globe, than there ever has been in that of Connecticut. The same may be said of the Massachusetts and Pennsylvania; and, indeed, of the others very nearly. "That these constitutions, in turbulent times, would become wholly monarchical, or wholly republican," they must be such times as would have a similar effect upon the constitution at home. But in order to avoid the danger of this, what is to be done? Not give us an English constitution, it seems, but make sure of us at once, by giving us constitutions wholly monarchical, annihilating our houses of representatives first, by taking from them the support of government, &c., and then making the council and judges wholly dependent on the crown.

That a representation in parliament is impracticable, we all agree; but the consequence is, that we must have a representation in our supreme legislatures here. This was the consequence that was drawn by kings, ministers, our ancestors, and the whole nation, more than a century ago, when the colonies were first settled, and continued to be the general sense until the last peace; and it must be the general sense again soon, or Great Britain will lose her colonies.

"This is apparently the meaning of that celebrated passage in Governor Hutchinson's letter, that rung through the continent, namely, — 'There must be an abridgment of what is called English liberties.'"[1] But all the art and subtlety of Massachusettensis will never vindicate or excuse that expression. According to this writer, it should have been, "there is an abridgment of English liberties, and it cannot be otherwise." But every candid reader must see that the letter-writer had more than that in his *view* and in his *wishes*. In the same letter, a little before, he says, "what marks of resentment the parliament will show, whether they will be upon the province in general, or particular persons, is extremely uncertain; but that they will be placed somewhere is most certain; and I add, *because I think it ought*

[1] "If that be the case, the right or privilege that we complain of being deprived of, is not withheld by Britain; but the first principles of government, and the immutable laws of nature, render it impossible for us to enjoy it. This is apparently the meaning of that celebrated passage in Governor Hutchinson's letter, that rang through the continent, namely, — 'There must be an abridgment of what is called English liberties.'" *Massachusettensis.*

to be so."[1] Is it possible to read this, without thinking of the Port Bill, the Charter Bill, and the resolves for sending persons to England, by the statute of Henry VIII., to be tried? But this is not all: "This is most certainly a crisis," says he, &c. "If no measure shall have been taken to secure this dependence, (that is, the dependence which a colony ought to have upon the parent state,) it is all over with us." "The friends of government will be utterly disheartened; and the friends of anarchy will be afraid of nothing, be it ever so extravagant." But this is not all: "I never think of the measures necessary for the peace and good order of the colonies without pain." "There must be an abridgment of what are called English liberties." What could he mean? Any thing less than depriving us of trial by jury? Perhaps he wanted an act of parliament to try persons here for treason, by a court of admiralty. Perhaps an act, that the province should be governed by a governor and a mandamus council, without a house of representatives. But to put it out of all doubt, that his meaning was much worse than Massachusettensis endeavors to make it, he explains himself in a subsequent part of the letter: "I wish," says he, "the good of the colony, *when I wish to see some further restraint of liberty.*" Here it is rendered certain, that he is pleading for a further restraint of liberty, not explaining the restraint he apprehended the constitution had already laid us under.

My indignation at this letter has sometimes been softened by compassion. It carries on the face of it evident marks of *madness.* It was written in such a transport of passions, *ambition* and *revenge* chiefly, that his reason was manifestly overpowered. The vessel was tost in such a hurricane, that she could not feel her helm. Indeed, he seems to have had a confused consciousness of this himself. "Pardon me this excursion," says he; "it really proceeds from the state of mind into which our perplexed affairs often throw me."

"It is our highest interest to continue a part of the British empire; and equally our duty to remain subject to the authority of parliament," says Massachusettensis.

We are a part of the British dominions, that is, of the King

[1] These extracts are taken from the most significant of the letters obtained in England, and sent out by Dr. Franklin, which betrayed the real policy of Governor Hutchinson. See the *Diary*, vol. ii. pp. 318, 319.

of Great Britain, and it is our interest and duty to continue so. It is equally our interest and duty to continue subject to the authority of parliament, in the regulation of our trade, as long as she shall leave us to govern our internal policy, and to give and grant our own money, and no longer.

This letter concludes with an agreeable flight of fancy.[1] The time may not be so far off, however, as this writer imagines, when the colonies may have the balance of numbers and wealth in their favor. But when that shall happen, if we should attempt to rule her by an American parliament, without an adequate representation in it, she will infallibly resist us by her arms.

NO. VIII.

It has often been observed by me, and it cannot be too often repeated, that *colonization* is *casus omissus* at common law. There is no such title known in that law. By common law, I mean that system of customs written and unwritten, which was known and in force in England in the time of King Richard I. This continued to be the case down to the reign of Elizabeth and King James I. In all that time, the laws of England were confined to the realm, and within the four seas. There was no provision made in this law for governing colonies beyond the Atlantic, or beyond the four seas, by authority of parliament; no, nor for the king to grant charters to subjects to settle in foreign countries. It was the king's prerogative to prohibit the emigration of any of his subjects, by issuing his writ *ne exeat regno*. And, therefore, it was in the king's power to permit his subjects to leave the kingdom. "It is a high crime to disobey the king's lawful commands or prohibitions, as not returning from beyond sea upon the king's letters to that purpose; for

[1] The passage is one of some beauty, and deserves to be inserted: —

"After many more centuries shall have rolled away, long after we, who are now bustling upon the stage of life, shall have been received to the bosom of mother earth, and our names are forgotten, the colonies may be so far increased as to have the balance of wealth, numbers, and power in their favor; the good of the empire may make it necessary to fix the seat of government here; and some future George, equally the friend of mankind with him that now sways the British sceptre, may cross the Atlantic, and rule Great Britain by an American parliament."

which the offender's lands shall be seized until he return; and when he does return, he shall be fined, &c.; or going beyond sea against the king's will, expressly signified, either by the writ *ne exeat regno*, or under the great or privy seal, or signet, or by proclamation."[1] When a subject left the kingdom by the king's permission, and if the nation did not remonstrate against it, by the nation's permission too, at least connivance, he carried with him, as a man, all the rights of nature. His allegiance bound him to the king, and entitled him to protection. But how? Not in France; the King of England was not bound to protect him in France. Nor in America. Nor in the dominions of Louis. Nor of Sassacus, or Massachusetts. He had a right to protection and the liberties of England, upon his return there, not otherwise. How, then, do we New Englandmen derive our laws? I say, not from parliament, not from common law, but from the law of nature, and the compact made with the king in our charters. Our ancestors were entitled to the common law of England when they emigrated, that is, to just so much of it as they pleased to adopt, and no more. They were not bound or obliged to submit to it, unless they chose it. By a positive principle of the common law they were bound, let them be in what part of the world they would, to do nothing against the allegiance of the king. But no kind of provision was ever made by common law for punishing or trying any man, even for treason committed out of the realm. He must be tried in some county of the realm by that law, the county where the overt act was done, or he could not be tried at all. Nor was any provision ever made, until the reign of Henry VIII., for trying treasons committed abroad, and the acts of that reign were made on purpose to catch Cardinal Pole.

So that our ancestors, when they emigrated, having obtained permission of the king to come here, and being never commanded to return into the realm, had a clear right to have erected in this wilderness a British constitution, or a perfect democracy, or any other form of government they saw fit. They, indeed, while they lived, could not have taken arms against the King of England, without violating their allegiance; but their children would not have been born within the king's allegiance,

[1] Hawkins' *Pleas of the Crown*, c. xxii. § 4.

would not have been natural subjects, and consequently not entitled to protection, or bound to the king.

Massachusettensis seems possessed of these ideas, and attempts in the most awkward manner to get rid of them. He is conscious that America must be a part of the realm, before it can be bound by the authority of parliament; and, therefore, is obliged to suggest that we are annexed to the realm, and to endeavor to confuse himself and his readers, by confounding the realm with the empire and dominions.

But will any man soberly contend, that America was ever annexed to the realm? to what realm? When New England was settled, there was a realm of England, a realm of Scotland, and a realm of Ireland. To which of these three realms was New England annexed? To the realm of England, it will be said. But by what law? No territory could be annexed to the realm of England but by an act of parliament. Acts of parliament have been passed to annex Wales, &c. &c. to the realm; but none ever passed to annex America. But if New England was annexed to the realm of England, how came she annexed to the realm of, or kingdom of Great Britain? The two realms of England and Scotland were, by the act of union, incorporated into one kingdom, by the name of Great Britain; but there is not one word about America in that act.

Besides, if America was annexed to the realm, or a part of the kingdom, every act of parliament that is made would extend to it, named or not named. But everybody knows, that every act of parliament, and every other record, constantly distinguishes between this kingdom and his majesty's other dominions. Will it be said that Ireland is annexed to the realm, or a part of the kingdom of Great Britain? Ireland is a distinct kingdom, or realm, by itself, notwithstanding British parliament claims a right of binding it in all cases, and exercises it in some. And even so, the Massachusetts is a realm, New York is a realm, Pennsylvania another realm, to all intents and purposes, as much as Ireland is, or England or Scotland ever were. The King of Great Britain is the sovereign of all these realms.

This writer says, "that in denying that the colonies are annexed to the realm, and subject to the authority of parliament, individuals and bodies of men subvert the fundamentals of government, deprive us of British liberties, and build up absolute monarchy in the colonies."

This is the first time that I ever heard or read that the colonies are annexed to the realm. It is utterly denied that they are, and that it is possible they should be, without an act of parliament and acts of the colonies. Such an act of parliament cannot be produced, nor any such law of any one colony. Therefore, as this writer builds the whole authority of parliament upon this fact, namely, — that the colonies are annexed to the realm, and as it is certain they never were so annexed, the consequence is, that his whole superstructure falls.

When he says, that they subvert the fundamentals of government, he begs the question. We say, that the contrary doctrines subvert the fundamentals of government. When he says, that they deprive us of British liberties, he begs the question again. We say, that the contrary doctrine deprives us of English liberties; as to British liberties, we scarcely know what they are, as the liberties of England and Scotland are not precisely the same to this day. English liberties are but certain rights of nature, reserved to the citizen by the English constitution, which rights cleaved to our ancestors when they crossed the Atlantic, and would have inhered in them if, instead of coming to New England, they had gone to Otaheite or Patagonia, even although they had taken no patent or charter from the king at all. These rights did not adhere to them the less, for their purchasing patents and charters, in which the king expressly stipulates with them, that they and their posterity should forever enjoy all those rights and liberties.

The human mind is not naturally the clearest atmosphere; but the clouds and vapors which have been raised in it by the artifices of temporal and spiritual tyrants, have made it impossible to see objects in it distinctly. Scarcely any thing is involved in more systematical obscurity than the rights of our ancestors, when they arrived in America. How, in common sense, came the dominions of King Philip, King Massachusetts, and twenty other sovereigns, independent princes here, to be within the allegiance of the Kings of England, James and Charles? America was no more within the allegiance of those princes, by the common law of England, or by the law of nature, than France and Spain were. Discovery, if that was incontestable, could give no title to the English king, by common law, or by the law of nature, to the lands, tenements, and heredita-

ments of the native Indians here. Our ancestors were sensible of this, and, therefore, honestly purchased their lands of the natives. They might have bought them to hold allodially, if they would.

But there were two ideas, which confused them, and have continued to confuse their posterity; one derived from the feudal, the other from the canon law. By the former of these systems, the prince, the general, was supposed to be sovereign lord of all the lands conquered by the soldiers in his army; and upon this principle, the King of England was considered in law as sovereign lord of all the land within the realm. If he had sent an army here to conquer King Massachusetts, and it had succeeded, he would have been sovereign lord of the land here upon these principles; but there was no rule of the common law that made the discovery of the country by a subject a title to that country in the prince. But conquest would not have annexed the country to the realm, nor have given any authority to the parliament. But there was another mist cast before the eyes of the English nation from another source. The pope claimed a sovereign propriety in, as well as authority over, the whole earth. As head of the Christian church, and vicar of God, he claimed this authority over all Christendom; and, in the same character, he claimed a right to all the countries and possessions of heathens and infidels; a right divine to exterminate and destroy them at his discretion, in order to propagate the Catholic faith. When King Henry VIII. and his parliament threw off the authority of the pope, stripped his holiness of his supremacy, and invested it in himself by an act of parliament, he and his courtiers seemed to think that all the rights of the holy see were transferred to him; and it was a union of these two, (the most impertinent and fantastical ideas that ever got into a human pericranium, namely, — that, as feudal sovereign and supreme head of the church together, a king of England had a right to all the land his subjects could find, not possessed by any Christian state or prince, though possessed by heathen or infidel nations,) which seems to have deluded the nation about the time of the settlement of the colonies. But none of these ideas gave or inferred any right in parliament, over the new countries conquered or discovered; and, therefore, denying that the colonies are a part of the realm, and that as such they are

subject to parliament, by no means deprives us of English liberties. Nor does it "build up absolute monarchy in the colonies." For, admitting these notions of the common and feudal law to have been in full force, and that the king was absolute in America, when it was settled; yet he had a right to enter into a contract with his subjects, and stipulate that they should enjoy all the rights and liberties of Englishmen forever, in consideration of their undertaking to clear the wilderness, propagate Christianity, pay a fifth part of ore, &c. Such a contract as this has been made with all the colonies, royal governments, as well as charter ones. For the commissions to the governors contain the plan of the government, and the contract between the king and subject in the former, as much as the charters in the latter.

Indeed, this was the reasoning, and upon these feudal and *catholic* principles, in the time of some of the predecessors of Massachusettensis. This was the meaning of Dudley, when he asked, "Do you think that English liberties will follow you to the ends of the earth?" His meaning was, that English liberties were confined to the realm, and, out of that, the king was absolute. But this was not true; for an English king had no right to be absolute over Englishmen out of the realm, any more than in it; and they were released from their allegiance, as soon as he deprived them of their liberties.

But "our charters suppose regal authority in the grantor." True, they suppose it, whether there was any or not. "If that authority be derived from the British (he should have said English) crown, it presupposes this territory to have been a part of the British (he should have said English) dominion, and as such subject to the imperial sovereign." How can this writer show this authority to be derived from the English crown, including in the idea of it lords and commons? Is there the least color for such an authority, but in the popish and feudal ideas before mentioned? And do these popish and feudal ideas include parliament? Was parliament, were lords and commons, parts of the head of the church; or was parliament, that is, lords and commons, part of the sovereign feudatory? Never. But why was this authority derived from the English, any more than the Scottish or Irish crown? It is true, the land was to be held in socage, like the manor of East Greenwich; but this was compact, and it might have been as well to hold, as they held in Glasgow or Dublin.

But, says this writer, "if that authority was vested in the person of the king in a different capacity, the British constitution and laws are out of the question, and the king must be absolute as to us, as his prerogatives have never been limited." Not the prerogatives limited in our charters, when in every one of them all the rights of Englishmen are secured to us? Are not the rights of Englishmen sufficiently known? and are not the prerogatives of the king among those rights?

As to those colonies which are destitute of charters, the commissions to their governors have ever been considered as equivalent securities, both for property, jurisdiction, and privileges, with charters; and as to the power of the crown being absolute in those colonies, it is absolute nowhere. There is no fundamental or other law that makes a king of England absolute anywhere, except in conquered countries; and an attempt to assume such a power, by the fundamental laws, forfeits the prince's right even to the limited crown.

As to "the charter governments reverting to absolute monarchy, as their charters may happen to be forfeited by the grantees not fulfilling the conditions of them," I answer, if they could be forfeited, and were actually forfeited, the only consequence would be, that the king would have no power over them at all. He would not be bound to protect the people, nor, that I can see, would the people here, who were born here, be, by any principle of common law, bound even to allegiance to the king. The connection would be broken between the crown and the natives of the country.

It has been a great dispute, whether charters granted within the realm can be forfeited at all. It was a question debated with infinite learning, in the case of the charter of London. It was adjudged forfeited in an arbitrary reign; but afterwards, after the revolution, it was declared in parliament not forfeited, and by an act of parliament made incapable of forfeiture. The charter of Massachusetts was declared forfeited too. So were other American charters. The Massachusetts alone were tame enough to give it up. But no American charter will ever be decreed forfeited again; or if any should, the decree will be regarded no more than a vote of the lower house of the Robinhood society. The court of chancery has no authority without the realm; by common law, surely it has none in America. What! the privileges

of millions of Americans depend on the discretion of a lord chancellor? God forbid! The passivity of this colony in receiving the present charter in lieu of the first, is, in the opinion of some, the deepest stain upon its character. There is less to be said in excuse for it than the witchcraft, or hanging the Quakers. A vast party in the province were against it at the time, and thought themselves betrayed by their agent. It has been a warning to their posterity, and one principal motive with the people never to trust any agent with power to concede away their privileges again. It may as well be pretended that the people of Great Britain can forfeit their privileges, as the people of this province. If the contract of state is broken, the people and king of England must recur to nature. It is the same in this province. We shall never more submit to decrees in chancery, or acts of parliament, annihilating charters, or abridging English liberties.

Whether Massachusettensis was born, as a politician, in the year 1764, I know not; but he often writes as if he knew nothing of that period. In his attempt to trace the denial of the supreme authority of the parliament, he commits such mistakes as a man of age at that time ought to blush at.[1] He says, that "when the Stamp Act was made, the authority of parliament to impose external taxes, or, in other words, to lay duties upon goods and merchandise, was admitted," and that when the Tea Act was made, "a new distinction was set up, that parliament had a right to lay duties upon merchandise for the purpose of regulating trade, but not for the purpose of raising a revenue." This is a total misapprehension of the declared opinions of people at those times. The authority of parliament to lay taxes for a revenue has been always generally denied. And their right

[1] "It is curious, indeed, to trace the denial and oppugnation to the supreme authority of the state. When the Stamp Act was made, the authority of parliament to impose internal taxes was denied; but their right to impose external ones, or, in other words, to lay duties upon goods and merchandise, was admitted. When the act was made, imposing duties upon tea, &c., a new distinction was set up, that the parliament had a right to lay duties upon merchandise for the purpose of regulating trade, but not for the purpose of raising a revenue; that is, the parliament had good right, and lawful authority, to lay the former duty of a shilling on the pound, but had none to lay the present duty of threepence. Having got thus far safe, it was only taking one step more to extricate ourselves entirely from their fangs, and become independent states; that our patriots most heroically resolved upon, and flatly denied that parliament had a right to make any laws whatever, that should be binding upon the colonies."

Massachusettensis.

to lay duties to regulate trade has been denied by many, who have ever contended that trade should be regulated only by prohibitions.

The act of parliament of the 4th George III., passed in the year 1764, was the first act of the British parliament that ever was passed, in which the design of raising a revenue was expressed. Let Massachusettensis name any statute, before that, in which the word revenue is used, or the thought of raising a revenue is expressed. This act is entitled "an act for granting certain duties in the British colonies and plantations in America," &c. The word revenue, in the preamble of this act, instantly ran through the colonies, and rang an alarm, almost as much as if the design of forging chains for the colonists had been expressed in words. I have now before me a pamphlet, written and printed in the year 1764, entitled "The Sentiments of a British American," upon this act. How the idea of a revenue, though from an acknowledged external tax, was relished in that time, may be read in the frontispiece of that pamphlet.

Ergo quid refert mea
Cui serviam? clitellas dum portem meas. — PHÆDRUS.

The first objection to this act, which was made in that pamphlet, by its worthy author, OXENBRIDGE THACHER, who died a martyr to that anxiety for his country which the conduct of the junto gave him, is this: — "that a tax is thereby laid on several commodities, to be raised and levied in the plantations, and to be remitted home to England. This is esteemed a grievance, inasmuch as the same are laid without the consent of the representatives of the colonists. It is esteemed an essential British right, that no person shall be subject to any tax, but what in person, or by his representative, he hath a voice in laying." Here is a tax, unquestionably external, in the sense in which that word is used in the distinction that is made by some between external and internal taxes, and unquestionably laid in part for the regulation of trade, yet called a grievance, and a violation of an essential British right, in the year 1764, by one who was then at the head of the popular branch of our constitution, and as well acquainted with the sense of his constituents as any man living. And it is indisputable, that in those words he wrote the almost universal sense of this colony.

There are so many egregious errors in point of fact, and re-

specting the opinions of the people, in this writer, which it is difficult to impute to wilful misrepresentation, that I sometimes think he is some smart young gentleman, come up into life since this great controversy was opened; if not, he must have conversed wholly with the junto, and they must have deceived him respecting their own sentiments.

This writer sneers at the distinction between a right to lay the former duty of a shilling on the pound of tea, and the right to lay the threepence. But is there not a real difference between laying a duty to be paid in England upon exportation, and to be paid in America upon importation? Is there not a difference between parliament's laying on duties within their own realm, where they have undoubted jurisdiction, and laying them out of their realm, nay, laying them on in our realm, where we say they have no jurisdiction? Let them lay on what duties they please in England, we have nothing to say against that.

"Our patriots most heroically resolved to become independent states, and flatly denied that parliament had a right to make any laws whatever, that should be binding upon the colonies."

Our scribbler, more heroically still, is determined to show the world, that he has courage superior to all regard to modesty, justice, or truth. Our patriots have never determined or desired to be independent states, if a voluntary cession of a right to regulate their trade can make them dependent even on parliament; though they are clear in theory that, by the common law and the English constitution, parliament has no authority over them. None of the patriots of this province, of the present age, have ever denied that parliament has a right, from our voluntary cession, to make laws which shall bind the colonies, so far as their commerce extends.

"There is no possible medium between absolute independence and subjection to the authority of parliament." If this is true, it may be depended upon, that all North America are as fully convinced of their independence, their absolute independence, as they are of their own existence; and as fully determined to defend it at all hazards, as Great Britain is to defend her independence against foreign nations. But it is not true. An absolute independence on parliament, in all internal concerns and cases of taxation, is very compatible with an absolute dependence on it, in all cases of external commerce.

"He must be blind indeed, that cannot see our dearest interest in the latter, (that is, in an absolute subjection to the authority of parliament,) notwithstanding many pant after the former," (that is, absolute independence.) The man who is capable of writing, in cool blood, that our interest lies in an absolute subjection to parliament, is capable of writing or saying any thing for the sake of his pension. A legislature that has so often discovered a want of information concerning us and our country; a legislature interested to lay burdens upon us; a legislature, two branches of which, I mean the lords and commons, neither love nor fear us! Every American of fortune and common sense, must look upon his property to be sunk downright one half of its value, the moment such an absolute subjection to parliament is established.

That there are any who pant after "independence," (meaning by this word a new plan of government over all America, unconnected with the crown of England, or meaning by it an exemption from the power of parliament to regulate trade,) is as great a slander upon the province as ever was committed to writing. The patriots of this province desire nothing new; they wish only to keep their old privileges. They were, for one hundred and fifty years, allowed to tax themselves, and govern their internal concerns as they thought best. Parliament governed their trade as they thought fit. This plan they wish may continue forever. But it is honestly confessed, rather than become subject to the absolute authority of parliament in all cases of taxation and internal polity, they will be driven to throw off that of regulating trade.

"To deny the supreme authority of the state, is a high misdemeanor; to oppose it by force, an overt act of treason." True; and therefore, Massachusettensis, who denies the king represented by his governor, his majesty's council by charter, and house of representatives, to be the supreme authority of this province, has been guilty of a high misdemeanor; and those ministers, governors, and their instruments, who have brought a military force here, and employed it against that supreme authority, are guilty of ——, and ought to be punished with ——. I will be more mannerly than Massachusettensis.

"The realm of England is an appropriate term for the ancient realm of England, in contradistinction to Wales and other territories that have been annexed to it."

There are so many particulars in the case of Wales analogous to the case of America, that I must beg leave to enlarge upon it.

Wales was a little portion of the island of Great Britain, which the Saxons were never able to conquer. The Britons had reserved this tract of land to themselves, and subsisted wholly by pasturage among their mountains. Their princes, however, during the Norman period, and until the reign of King Edward I., did homage to the crown of England, as their feudal sovereign, in the same manner as the prince of one independent state in Europe frequently did to the sovereign of another. This little principality of shepherds and cowherds had, however, maintained its independence through long and bloody wars against the omnipotence of England, for eight hundred years. It is needless to enumerate the causes of the war between Lewellyn and Edward I. It is sufficient to say, that the Welsh prince refused to go to England to do homage, and Edward obtained a new aid of a fifteenth from his parliament, to march with a strong force into Wales. Edward was joined by David and Roderic, two brothers of Lewellyn, who made a strong party among the Welsh themselves, to assist and second the attempts to enslave their native country. The English monarch, however, with all these advantages, was afraid to put the valor of his enemies to a trial, and trusted to the *slow effects of famine* to subdue them. Their pasturage, with such an enemy in their country, could not subsist them, and Lewellyn at last submitted, and bound himself to pay a reparation of damages, to do homage to the crown of England, and almost to surrender his independence as a prince, by permitting all the other barons of Wales, excepting four, to swear fealty to the same crown. But fresh complaints soon arose. The English grew insolent on their bloodless victory, and oppressed the inhabitants; many insults were offered, which at last raised the indignation of the Welsh, so that they determined again to take arms, rather than bear any longer the oppression of the haughty victors. The war raged some time, until Edward summoned all his military tenants, and advanced with an army too powerful for the Welsh to resist. Lewellyn was at last surprised by Edward's General, Mortimer, and fighting at a great disadvantage, was slain, with two thousand of his men. David, who succeeded in the principality, maintained the war for some time, but at last was betrayed to the enemy, sent

in chains to Shrewsbury, brought to a formal trial before the peers of England, and, although a sovereign prince, ordered by Edward to be hanged, drawn, and quartered, as a traitor, for defending by arms the liberties of his native country! All the Welsh nobility submitted to the conqueror. The laws of England, sheriffs, and other ministers of justice were established in that principality.

Now Wales was always part of the dominions of England. "Wales was always feudatory to the kingdom of England." It was always held of the crown of England, or the kingdom of England; that is, whoever was King of England had a right to homage, &c. from the Prince of Wales. But yet Wales was not parcel of the realm or kingdom, nor bound by the laws of England. I mention and insist upon this, because it shows that, although the colonies are bound to the crown of England; or, in other words, owe allegiance to whosoever is King of England; yet it does not follow that the colonies are a parcel of the realm or kingdom, and bound by its laws. As this is a point of great importance, I must beg pardon, however unentertaining it may be, to produce my authorities.

"Wales was always feudatory to the kingdom of England."*

Held of the crown, but not parcel;† and, therefore, the Kings of Wales did homage and swore fealty to Henry II. and John and Henry III.

And 11 Edward I. Upon the conquest of Lewellyn, Prince or King of Wales, that principality became a part of the dominion of the realm of England. And by the statute Walliae, 12 Edward I., it was annexed and united to the crown of England, *tanquam partem corporis ejusdem*, &c. Yet, if the statute Walliae, made at Rutland, 12 Edward I., was not an act of parliament, (as it seems that it was not,) the incorporation made thereby was only a union *jure feudali, et non jure proprietatis.*"

"Wales, before the union with England, was governed by its proper laws," &c.

By these authorities it appears, that Wales was subject, by the feudal law, to the crown of England before the conquest of Lewellyn, but not subject to the laws of England; and indeed, after this conquest, Edward and his nobles did not seem to think

* Comyn's Digest, vol. v. p. 626.
† Per Cook. 1 Roll. 247; 2 Roll. 29.

it subject to the English parliament, but to the will of the king, as a conqueror of it in war. Accordingly, that instrument which is called *Statutum Walliae*, and to be found in the appendix to the statutes, although it was made by the advice of the peers, or officers of the army more properly, yet it never was passed as an act of parliament, but as an edict of the king. It begins, not in the style of an act of parliament: "*Edwardus Dei gratia Rex Angliæ, Dominus Hyberniæ, et Dux Aquitaniæ, omnibus fidelibus suis, &c. in Wallia. Divina Providentia, quæ in sui dispositione*, says he, *non fallitur, inter alia dispensationis suæ munera, quibus nos et Regnum nostrum Angliæ decorare dignata est, terram Walliae, cum incolis suis prius nobis* jure feudali *subjectam, jam sui gratia*, in proprietatis nostræ dominium, *obstaculis quibuscumque cessantibus, totaliter et cum integritate convertit*, et coronæ regni prædicti, tanquam partem corporis ejusdem annexuit et univit."

Here is the most certain evidence,—1. That Wales was subject to the kings of England by the feudal law before the conquest, though not bound by any laws but their own. 2. That the conquest was considered, in that day, as conferring the property, as well as jurisdiction of Wales, to the English crown. 3. The conquest was considered as annexing and uniting Wales to the English crown, both in point of property and jurisdiction, as a part of one body. Yet, notwithstanding all this, parliament was not considered as acquiring any share in the government of Wales by this conquest. If, then, it should be admitted that the colonies are all annexed and united to the crown of England, it will not follow that lords and commons have any authority over them.

This *statutum Walliae*, as well as the whole case and history of that principality, is well worthy of the attention and study of Americans, because it abounds with evidence, that a country may be subject to the crown of England, without being subject to the lords and commons of that realm, which entirely overthrows the whole argument of Governor Hutchinson and of Massachusettensis, in support of the supreme authority of parliament over all the dominions of the imperial crown. "*Nos itaque*," &c. says King Edward I., "*volentes prædictam terram, &c. sicut et cæteras ditioni nostræ subjectas, &c. sub debito regimine gubernari, et incolas seu habitatores terrarum illarum, qui alto et basso* se submiserunt voluntati nostræ, *et quos sic ad nostram recepimus*

voluntatem, certis legibus et consuetudinibus &c. tractari, leges et consuetudines partium illarum hactenus usitatas coram nobis et proceribus regni nostri fecimus recitari, quibus diligenter auditis, et plenius intellectis, quasdam ipsarum de concilio procerum prædictorum delevimus, quasdam permisimus, et quasdam correximus, et etiam quasdam alias adjiciendas et statuendas decrevimus, et eas &c. observari volumus in forma subscripta."

And then goes on to prescribe and establish a whole code of laws for the principality, in the style of a sole legislature, and concludes :

"*Et ideo vobis mandamus, quod præmissa de cetero in omnibus firmiter observetis. Ita tamen quod quotiescunque, et quandocunque, et ubicunque, nobis placuerit, possimus prædicta statuta et eorum partes singulas declarare, interpretari, addere sive diminuere, pro nostræ libito voluntatis, et prout securitati nostræ et terræ nostræ prædictæ viderimus expedire.*"

Here is then a conquered people submitting to a system of laws framed by the mere will of the conqueror, and agreeing to be forever governed by his mere will. This absolute monarch, then, might afterwards govern this country with or without the advice of his English lords and commons.

To show that Wales was held, before the conquest of Lewellyn, of the King of England, although governed by its own laws, hear Lord Coke, in his commentary on the statute of Westminster. "At this time, namely, in 3 Edward I., Lewellyn was a Prince or King of Wales, who held the *same of the King of England as his superior lord, and owed him liege homage, and fealty;* and this is proved by our act, namely, that the King of England was *superior dominus*, that is, sovereign lord of the kingdom or principality of Wales."

Lord Coke says, "Wales was sometime a realm, or kingdom, (realm, from the French word *royaume*, and both *a regno,*) and governed *per suas regulas;*" and afterwards, "but, *jure feodali*, the kingdom of Wales was holden of the *crown of England*, and thereby, as Bracton saith, was *sub potestate regis.* And so it continued until the eleventh year of King Edward I., when he subdued the Prince of Wales, rising against him, and executed him for treason. The next year, namely, in the twelfth year of King Edward I., by authority of parliament, it is declared thus, speaking in the person of the king, (as ancient sta-

tutes were wont to do) *Divina Providentia*," &c. as in the statute *Walliae*, before recited. But here is an inaccuracy; for the *statutum Walliae* was not an act of parliament, but made by the king, with the advice of his officers of the army, by his sole authority, as the statute itself sufficiently shows. "Note," says Lord Coke, "divers monarchs hold their kingdoms of others *jure feodali*, as the Duke of Lombardy, Cicill, Naples, and Bohemia of the empire, Granado, Leons of Aragon, Navarre, Portugal of Castile; and so others."

After this, the Welsh seem to have been fond of the English laws, and desirous of being incorporated into the realm, to be represented in parliament, and enjoy all the rights of Englishmen, as well as to be bound by the English laws. But kings were so fond of governing this principality by their discretion alone, that they never could obtain these blessings until the reign of Henry VIII., and then they only could obtain a statute which enabled the king to alter their laws at his pleasure. They did, indeed, obtain, in the 15 Edward II., a writ to call twenty-four members to the parliament at York from South Wales, and twenty-four from North Wales; and again, in the 20 Edward II., the like number of forty-eight members for Wales, at the parliament of Westminster. But Lord Coke tells us, "that this wise and warlike nation was, long after the *statutum Walliae*, not satisfied nor contented, and especially for that they truly and constantly took part with their rightful sovereign and liege lord, King Richard II.; in revenge whereof, they had many severe and invective laws made against them in the reigns of Henry IV., Henry V., &c., all which, as unjust, are repealed and abrogated. And, to say the truth, this nation was never in quiet, until King Henry VII., their own countryman, obtained the crown. And yet not so really reduced in his time as in the reign of his son, Henry VIII., in whose time, by certain just laws, made at the humble suit of the subjects of Wales, the principality and dominion of Wales was incorporated and united to the realm of England; and enacted that every one born in Wales should enjoy the liberties, rights, and laws of this realm, as any subjects naturally born within this realm should have and inherit, and that they should have knights of shires and burgesses of parliament." Yet we see they could not obtain any security for their liberties, for Lord Coke tells us, "in the act of 34 Henry

VIII. it was enacted, that the king's most royal majesty should, from time to time, change, &c. all manner of things before in that act rehearsed, as to his most excellent wisdom and discretion should be thought convenient; and also to make laws and ordinances for the commonwealth of his said dominion of Wales at his majesty's pleasure. Yet for that the subjects of the dominion of Wales, &c. had lived in all dutiful subjection to the crown of England, &c., the said branch of the said statute of 34 Henry VIII. is repealed and made void, by 21 Jac. c. 10."

But if we look into the statute itself, of 27 Henry VIII. c. 26, we shall find the clearest proof, that being subject to the imperial crown of England did not entitle Welshmen to the liberties of England, nor make them subject to the laws of England. "Albeit the dominion, principality, and country of Wales *justly and righteously is, and ever hath been incorporated, annexed, united and subject to and under the imperial crown of this realm, as a very member and joint of the same*, wherefore the King's most royal majesty, of mere *droit*, and very right, is very head, king, lord, and ruler; yet notwithstanding, because that in the same country, principality and dominion, diverse *rights*, *usages*, *laws*, and customs, be far discrepant from the laws and customs of this realm, &c." Wherefore it is enacted by king, lords, and commons, "that his" (that is, the king's) "said country or dominion of Wales, shall be, stand, and continue forever from henceforth, incorporated, united, and annexed to and with this his realm of England, and that all and singular person and persons, born and to be born in the said principality, country, or dominion of Wales, shall have, enjoy, and inherit, all and singular freedoms, liberties, rights, privileges, and laws within this his realm, and other the king's dominions, as other the king's subjects naturally born within the same, have, enjoy, and inherit." Section 2 enacts that the laws of England shall be introduced and established in Wales, and that the laws, ordinances, and statutes of this realm of England forever, and none other, shall be used and practised forever thereafter, in the said dominion of Wales. The 27th section of this long statute enacts, that commissioners shall inquire into the laws and customs of Wales, and report to the king, who with his privy council are empowered to establish such of them as they should think proper. The twenty-eighth enacts that in all future parliaments *for this realm*, two knights for the shire of

Monmouth, and one burgess for the town, shall be chosen, and allowed such fees as other knights and burgesses of parliament were allowed. Section twenty-nine enacts that one knight shall be elected for every shire within the country or dominion of Wales, and one burgess for every shire town, to serve in that and every future parliament to be holden for this realm. But by section thirty-six, the king is empowered to revoke, repeal, and abrogate that whole act, or any part of it, at any time within three years.

Upon this statute, let it be observed, — 1. That the language of Massachusettensis, "imperial crown," is used in it; and Wales is affirmed to have *ever* been annexed and united to that imperial crown, as a very member and joint; which shows that being annexed to the imperial crown does not annex a country to the realm, or make it subject to the authority of parliament; because Wales certainly, before the conquest of Lewellyn, never was pretended to be so subject, nor afterwards ever pretended to be annexed to the realm at all, nor subject to the authority of parliament any otherwise than as the king claimed to be absolute in Wales, and therefore to make laws for it by his mere will, either with the advice of his proceres or without. 2. That Wales never was incorporated with the realm of England, until this statute was made, nor subject to any authority of English lords and commons. 3. That the king was so tenacious of his exclusive power over Wales, that he would not consent to this statute, without a clause in it to retain the power in his own hands of giving it what system of law he pleased. 4. That knights and burgesses, that is, representatives, were considered as *essential* and *fundamental* in the constitution of the new legislature which was to govern Wales. 5. That since this statute, the distinction between the realm of England and the realm of Wales has been abolished, and the realm of England, now and ever since, comprehends both; so that Massachusettensis is mistaken when he says, that the realm of England is an appropriate term for the ancient realm of England, in contradistinction from Wales, &c. 6. That this union and incorporation were made by the consent and upon the supplication of the people of Wales, as Lord Coke and many other authors inform us; so that here was an express contract between the two bodies of people. To these observations let me add a few questions:—

1. Was there ever any act of parliament, annexing, uniting, and consolidating any one of all the colonies to and with the realm of England or the kingdom of Great Britain?

2. If such an act of parliament should be made, would it, upon any principles of English laws and government, have any validity without the consent, petition, or supplication of the colonies?

3. Can such a union and incorporation ever be made, upon any principles of English laws and government, without admitting representatives for the colonies in the house of commons, and American lords into the house of peers?

4. Would not representatives in the house of commons, unless they were numerous in proportion to the numbers of people in America, be a snare rather than a blessing?

5. Would Britain ever agree to a proportionable number of American members; and if she would, could America support the expense of them?

6. Could American representatives possibly know the sense, the exigencies, &c. of their constituents, at such a distance, so perfectly as it is absolutely necessary legislators should know?

7. Could Americans ever come to the knowledge of the behavior of their members, so as to dismiss the unworthy?

8. Would Americans in general ever submit to septennial elections?

9. Have we not sufficient evidence, in the general frailty and depravity of human nature, and especially the experience we have had of Massachusettensis and the junto, that a deep, treacherous, plausible, corrupt minister would be able to seduce our members to betray us as fast as we could send them?

To return to Wales. In the statute of 34 and 35 Henry VIII. c. 26, we find a more complete system of laws and regulations for Wales. But the king is still tenacious of his absolute authority over it. It begins, "Our sovereign lord the king's majesty, of his tender zeal and affection, &c. towards his obedient subjects, &c. of Wales, &c. *hath devised and made* divers sundry good and necessary ordinances, which his majesty of his most abundant goodness *at the humble suit and petition of his said subjects of Wales*, is pleased and contented to be enacted by the assent of the lord spiritual and temporal, and the commons," &c.

Nevertheless, the king would not yet give up his unlimited

power over Wales; for by the one hundred and nineteenth section of this statute, the king, &c., may at all times hereafter, from time to time, change, add, alter, order, minish, and reform, all manner of things afore rehearsed, as to his most excellent wisdom and discretion shall be thought convenient; and also to make laws and ordinances for the commonwealth and good quiet of his said dominion of Wales, and his subjects of the same, from time to time, at his majesty's pleasure.

And this last section was never repealed until the 21 Jac. 1, c. 10, s. 4.

From the conquest of Lewellyn to this statute of James, is near three hundred and fifty years, during all which time the Welsh were very fond of being incorporated, and enjoying the English laws; the English were desirous that they should be; yet the crown would never suffer it to be completely done, because it claimed an authority to rule it by discretion. It is conceived, therefore, that there cannot be a more complete and decisive proof of any thing, than this instance is that a country may be subject to the crown of England, the imperial crown, and yet not annexed to the realm, nor subject to the authority of parliament.

The word *crown*, like the word *throne*, is used in various figurative senses; sometimes it means the kingly office, the head of the commonwealth; but it does not always mean the political capacity of the king; much less does it include in the idea of it, lords and commons. It may as well be pretended that the house of commons includes or implies a king. Nay, it may as well be pretended that the mace includes the three branches of the legislature.

By the feudal law, a person or a country might be subject to a king, a feudal sovereign, three several ways.

1. It might be subject to his person; and in this case it would continue so subject, let him be where he would, in his dominions or without. 2. To his crown; and in this case subjection was due to whatsoever person or family wore that crown, and would follow it, whatever revolutions it underwent. 3. To his crown and realm of state; and in this case it was incorporated as one body with the principal kingdom; and if that was bound by a parliament, diet, or cortes, so was the other.

It is humbly conceived, that the subjection of the colonies by compact and law, is of the second sort.

Suffer me, my friends, to conclude by making my most respectful compliments to the gentlemen of the regiment of royal Welsh fusileers. In the celebration of their late festival,[1] they discovered that they are not insensible to the feelings of a man for his native country. The most generous minds are the most exquisitely capable of this sentiment. Let me entreat them to recollect the history of their brave and intrepid countrymen, who struggled at least eleven hundred years for liberty. Let them compare the case of Wales with the case of America, and then lay their hands upon their hearts and say whether we can in justice be bound by all acts of parliament without being incorporated with the kingdom.

NO. IX.

Massachusettensis, in some of his writings, has advanced, that our allegiance is due to the political capacity of the king, and therefore involves in it obedience to the British parliament. Governor Hutchinson, in his memorable speech, laid down the same position. I have already shown, from the case of Wales, that this position is groundless, and that allegiance was due from the Welsh to the king, *jure feudali*, before the conquest of Lewellyn, and after that to the crown, until it was annexed to the realm, without being subject to acts of parliament any more than to acts of the king without parliament. I shall hereafter show from the case of Ireland, that subjection to the crown implies no obedience to parliament. But before I come to this, I must take notice of a pamphlet entitled "A Candid Examination of the Mutual Claims of Great Britain and the Colonies, with a Plan of Accommodation on Constitutional Principles."[2] This author says, — "To him, (that is, the king,) in his representative capacity, and as supreme executor of the laws made by a joint power of him and others, the oaths of allegiance are taken;" and afterwards, — "Hence, these professions (that is, of allegiance)

[1] This regiment was at the time stationed in Boston.

[2] This is the celebrated pamphlet written by Joseph Galloway, after he declared himself, and in which he gives an account of his action in the Congress of 1774. See vol. ii. p. 387.

are not made to him either in his legislative or executive capacities; but yet, it seems, they are made to the king. And into this distinction, *which is nowhere to be found*, either in the constitution of the government, in reason, or common sense, the ignorant and thoughtless have been deluded ever since the passing of the Stamp Act; and they have rested satisfied with it, without the least examination." And, in page 9, he says, — "I do not mean to offend the inventors of this refined distinction, when I ask them, is this acknowledgment made to the king in his politic capacity as king of Great Britain? If so, it includes a promise of obedience to the British laws." There is no danger of this gentleman's giving offence to the inventors of this distinction; for they have been many centuries in their graves. This distinction is to be found everywhere, — in the case of Wales, Ireland, and elsewhere, as I shall show most abundantly before I have done. It is to be found in two of the greatest cases, and most deliberate and solemn judgments, that were ever passed. One of them is Calvin's case, which, as Lord Coke tells us, was as elaborately, substantially, and judiciously argued as he ever heard or read of any. After it had been argued in the court of king's bench by learned counsel, it was adjourned to the exchequer chamber, and there argued again, first by counsel on both sides, and then by the lord chancellor and all the twelve judges of England; and among these were the greatest men that Westminster Hall ever could boast. Ellesmere, Bacon, Hyde, Hobart, Crook, and Coke, were all among them; and the chancellor and judges were unanimous in resolving. What says the book?* "Now, seeing the king hath but one person, and several capacities, and one politic capacity for the realm of England, and another for the realm of Scotland, it is necessary to be considered to which capacity *ligeance* is due. *And it was resolved* that it was due to the *natural person* of the king, (which is ever accompanied with the politic capacity, and the politic capacity as it were appropriated to the natural capacity,) and it is not due to the politic capacity only, that is, to the crown or kingdom distinct from his natural capacity." And further on, — "But it was clearly resolved by all the judges, that presently by the descent his majesty was completely and absolutely king, &c. and that

* 7 Rep. 19.

coronation was but a royal ornament. . . . In the reign of Edward II., the Spencers, to cover the treason hatched in their hearts, invented this damnable and damned opinion, that homage and oath of allegiance was more by reason of the king's crown (that is, of his politic capacity) than by reason of the person of the king, upon which opinion they inferred execrable and detestable consequences." And afterwards, — "Where divers books and acts of parliament speak of the ligeance of England, &c., all these, speaking briefly in a vulgar manner, are to be understood of the ligeance due by the people of England to the king; for no man will affirm that England itself, taking it for the continent thereof, doth owe any ligeance or faith, or that *any faith or ligeance should be due to it;* but it manifestly appeareth that the ligeance or faith of the subject is *proprium quarto modo* to the king, *omni, soli, et semper.* And oftentimes in the reports of our book cases, and in acts of parliament also, the crown or kingdom is taken for the king himself, &c. . . . Tenure *in capite* is a tenure of the crown, and is a *seigniorie in grosse*, that is, of the person of the king." And afterwards, — "For special purposes *the law makes him a body politic, immortal and invisible, whereunto our allegiance cannot appertain.*" I beg leave to observe here that these words in the foregoing adjudication, that "the natural person of the king is ever accompanied with the politic capacity, and the politic capacity as it were appropriated to the natural capacity," neither imply nor infer allegiance or subjection to the politic capacity; because in the case of King James I. his natural person was "accompanied" with three politic capacities at least, as king of England, Scotland, and Ireland; yet the allegiance of an Englishman to him did not imply or infer subjection to his politic capacity as king of Scotland.

Another place in which this distinction is to be found is in Moore's Reports.* "The case of the union of the realm of Scotland with England." And this deliberation, I hope, was solemn enough. This distinction was agreed on by commissioners of the English lords and commons, in a conference with commissioners of the Scottish parliament, and after many arguments and consultations by the lord chancellor and all the judges, and afterwards adopted by the lords and commons of both nations.

* Page 790.

"The judges answered with one assent," says the book, "that allegiance and laws were not of equiparation, for six causes;" the sixth and last of which is, "allegiance followeth the *natural person*, not the politic. . . If the king go out of England, with a company of his servants, allegiance remaineth among his subjects and servants, although he be out of his own realm, *whereto his laws are confined*, &c.; . . . and to prove the allegiance to be tied to the body natural of the king, not to the body politic, the Lord Coke cited the phrases of divers statutes, &c. And to prove that allegiance extended further than the laws national, they (the judges) showed, that every king of diverse kingdoms, or dukedoms, is to command every people to defend any of his kingdoms, without respect of that nation where he is born; as, if the king of Spain be invaded in Portugal, he may levy for defence of Portugal armies out of Spain, Naples, Castile, Milan, Flanders, and the like; as a thing incident to the allegiance of all his subjects, to join together in defence of any one of his territories, without respect of extent of the laws of that nation where he was born; whereby it manifestly appeareth that allegiance followeth the natural person of the king, and is not tied to the body politic respectively in every kingdom." There is one observation, not immediately to the present point, but so connected with our controversy that it ought not be overlooked. "For the matter of the great seal, the judges showed, that the seal was alterable by the king at his pleasure, and he might make one seal for both kingdoms; for seals, coin, and leagues are of absolute prerogative to the king without parliament, not restrained to any assent of the people. But for further resolution of this point, how far the great seal doth command out of England, they made this distinction, that the great seal was current for remedials, which groweth upon complaint of the subjects, and thereupon writs are addressed under the great seal of England, which writs are limited, their precinct to be within the places of the jurisdiction of the court that must give the redress of the wrong. And therefore writs are not to go into Ireland, nor the Isles, nor Wales, nor the counties palatine, because the king's courts here have not power to hold plea of lands or things there. But the great seal hath a power preceptory to the person, which power extendeth to any place where the person may be found." Ludlow's case &c. who "being at Rome, a commandment under the great seal

was sent to him to return. So, Bertie's case in Queen Mary's time, and Inglefield's case in Queen Elizabeth's, the privy seal went to command them to return into the realm; and for not coming, their lands were seized," &c. But to return to the point: "And as to the objection," says the book, "that none can be born a natural subject of two kingdoms, they denied that absolutely; for although locally he can be born but in one, yet effectually the allegiance of the king extending to both, his birthright shall extend to both." And afterwards, — "But that his kingly power extendeth to divers nations and kingdoms, all owe him equal subjection, and are equally born to the benefit of his protection; and although he is to govern them by *their distinct laws*, yet any one of the people coming into the other, is to have the benefit of the laws, wheresoever he cometh; . . . but living in one, or for his livelihood in one, he is not to be taxed in the other; because laws ordain taxes, impositions, and charges, as a discipline of subjection particularized to every particular nation." Another place where this distinction is to be found is in Foster's Crown Law. "There have been writers who have carried the notion of natural, perpetual, unalienable allegiance much farther than the subject of this discourse will lead me. They say, very truly, that it is due to the *person* of the king, &c. . . It is undoubtedly due to the person of the king; but in that respect natural allegiance differeth nothing from that we call local. For allegiance, considered in every light, is alike due to the person of the king, and is paid, and in the nature of things must be constantly paid, to that prince who, for the time being, is in the actual and full possession of the regal dignity."

Indeed, allegiance to a sovereign lord is nothing more than fealty to a subordinate lord, and in neither case has any relation to or connection with laws or parliaments, lords or commons. There was a reciprocal confidence between the lord and vassal. The lord was to protect the vassal in the enjoyment of his land. The vassal was to be faithful to his lord, and defend him against his enemies. This obligation, on the part of the vassal, was his fealty, *fidelitas*. The oath of fealty, by the feudal law, to be taken by the vassal or tenant, is nearly in the very words of the ancient oath of allegiance. But neither fealty, allegiance, or the oath of either implied any thing about laws, parliaments, lords, or commons.

The fealty and allegiance of Americans, then, is undoubtedly due to the person of King George III., whom God long preserve and prosper. It is due to him in his natural person, as that natural person is intituled to the crown, the kingly office, the royal dignity of the realm of England. And it becomes due to his natural person because he is intituled to that office. And because, by the charters, and other express and implied contracts made between the Americans and the kings of England, they have bound themselves to fealty and allegiance to the natural person of that prince, who shall rightfully hold the kingly office in England, and no otherwise.

"With us, in England," says Blackstone, "it becoming a settled principle of tenure, that all lands in the kingdom are holden of the king, as their sovereign and lord paramount, &c. the oath of allegiance was necessarily confined to the person of the king alone. By an easy analogy, the term of allegiance was soon brought to signify all other engagements which are due from subjects, as well as those duties which were simply and merely territorial. And the oath of allegiance, as administered for upwards of six hundred years, contained a promise 'to be true and faithful to the king and his heirs, and truth and faith to bear of life and limb and terrene honor, and not to know or hear of any ill or damage intended him, without defending him therefrom.' But at the revolution, the terms of this oath being thought, perhaps, to favor too much the notion of non-resistance, the present form was introduced by the convention parliament, which is more general and indeterminate than the former, the subject only promising 'that he will be faithful, and bear true allegiance to the king,' without mentioning 'his heirs,' or specifying in the least wherein that allegiance consists."

Thus, I think that all the authorities in law coincide exactly with the observation which I have heretofore made upon the case of Wales, and show that subjection to a king of England does not necessarily imply subjection to the crown of England; and that subjection to the crown of England does not imply subjection to the parliament of England; for allegiance is due to the person of the king, and to that alone, in all three cases; that is, whether we are subject to his parliament and crown, as well as his person, as the people in England are; whether we are subject to his crown and person, without parliament, as the

Welsh were after the conquest of Lewellyn and before the union; or as the Irish were after the conquest and before Poyning's law; or whether we are subject to his person alone, as the Scots were to the King of England, after the accession of James I., being not at all subject to the parliament or crown of England.

We do not admit any binding authority in the decisions and adjudications of the court of king's bench or common pleas, or the court of chancery, over America; but we quote them as the opinions of learned men. In these we find a distinction between a country conquered and a country discovered. Conquest, they say, gives the crown an absolute power; discovery only gives the subject a right to all the laws of England. They add, that all the laws of England are in force there. I confess I do not see the reason of this. There are several cases in books of law which may be properly thrown before the public. I am no more of a lawyer than Massachusettensis, but have taken his advice, and conversed with many lawyers upon our subject, some honest, some dishonest, some living, some dead, and am willing to lay before you what I have learned from all of them. In Salkeld, 411, the case of Blankard and Galdy: "In debt on a bond, the defendant prayed oyer of the condition, and pleaded the statute E. 6, against buying offices concerning the administration of justice; and averred, that this bond was given for the purchase of the office of provost-marshal in Jamaica, and that it concerned the administration of justice, and *that Jamaica is part of the revenue and possessions of the crown of England.* The plaintiff replied, that Jamaica is an island *beyond the seas*, which was conquered from the Indians and Spaniards in Queen Elizabeth's time, and the inhabitants are governed by their own laws, and not by the laws of England. The defendant rejoined, that, before such conquest, they were governed by their own laws; but since that, by the laws of England. Shower argued for the plaintiff, that, on a judgment in Jamaica, no writ of error lies here, but only an appeal to the council; *and as they are not represented in our parliament, so they are not bound by our statutes*, unless specially named.* Pemberton, contra, argued that, *by the conquest of a nation, its liberties, rights, and properties are quite*

* And. 115.

lost; that by consequence, their laws are lost too, for the law is but the rule and guard of the other; those that conquer cannot, by their victory, lose their laws and become subject to others.* That error lies here upon a judgment in Jamaica, which could not be, if they were not under the same law. Et per Holt, C. J. and Cur. 1st. In case of an uninhabited country, newly found out by English subjects, all laws in force in England are in force there; so it seemed to be agreed. 2. Jamaica being conquered, and not pleaded to be parcel of the kingdom of England, but part of the possessions and revenue of the crown of England, the laws of England did not take place there, until declared so by the conqueror or his successors. The Isle of Man and Ireland are part of the *possessions* of the crown of England, yet retain their ancient laws; that, in Davis, 36, it is not pretended that the custom of tanistry was determined by the conquest of Ireland, but by the new settlement made there after the conquest; that it was impossible the laws of this nation, by mere conquest, without more, should take place in a conquered country; because, for a time, there must want officers, without which our laws can have no force; that if our law did take place, yet they, in Jamaica, having power to make new laws, our general laws may be altered by theirs in particulars; also, they held that in case of an infidel country, their laws, by conquest, do not entirely cease, but only such as are against the law of God; and that in such cases, where the laws are rejected or silent, the conquered country shall be governed according to the rule of natural equity. Judgment *pro quer'*."

Upon this case I beg leave to make a few observations: —

1. That Shower's reasoning, that we are not bound by statutes, because not represented in parliament, is universal, and, therefore, his exception, "unless specially named," although it is taken from analogy to the case of Ireland, by Lord Coke and others, yet is not taken from the common law, but is merely arbitrary and groundless, as applied to us; because, if the want of representation could be supplied by "expressly naming" a country, the right of representation might be rendered null and nugatory. But of this, more another time.

2. That, by the opinion of Holt and the whole court, the laws

* Vaugh. 405.

of England, common and statute, are in force in a vacant country, discovered by Englishmen. But America was not a vacant country; it was full of inhabitants; our ancestors purchased the land; but, if it had been vacant, his lordship has not shown us any authority at common law, that the laws of England would have been in force there. On the contrary, by that law, it is clear they did not extend beyond seas, and therefore could not be binding there, any further than the free will of the discoverers should make them. The discoverers had a right by nature to set up those laws if they liked them, or any others that pleased them better, provided they were not inconsistent with their allegiance to the king.

3. The court held, that a country must be parcel of the kingdom of England, before the laws of England could take place there; which seems to be inconsistent with what is said before, because discovery of a vacant country does not make it parcel of the kingdom of England, which shows that the court, when they said, that all laws in *force* in England are in *force* in the discovered country, meant no more than that the discoverers had a right to all such laws, if they chose to adopt them.

4. The idea of the court, in this case, is exactly conformable to, if not taken from, the case of Wales. They consider a conquered country as Edward I. and his successors did Wales, as by the conquest annexed to the crown, as an absolute property, possession, or revenue, and, therefore, to be disposed of at its will; not entitled to the laws of England, although bound to be governed by the king's will, in parliament or out of it, as he pleased.

5. The Isle of Man and Ireland are considered, like Wales, as conquered countries, and part of the possessions (by which they mean property or revenue) of the crown of England, yet have been allowed by the king's will to retain their ancient laws.

6. That the case of America differs totally from the case of Wales, Ireland, Man, or any other case which is known at common law or in English history. There is no one precedent in point in any English records, and, therefore, it can be determined only by eternal reason and the law of nature. But yet that the analogy of all these cases of Ireland, Wales, Man, Chester, Durham, Lancaster, &c. clearly concur with the dictates of reason and

nature, that Americans are entitled to all the liberties of Englishmen, and that they are not bound by any acts of parliament whatever, by any law known in English records or history, excepting those for the regulation of trade, which they have consented to and acquiesced in.

7. To these let me add, that, as the laws of England and the authority of parliament were by common law confined to the realm and within the four seas, so was the force of the great seal of England. "The great seal of England is appropriated to England, and what is done under it has relation to England, and to no other place."* So that the king, by common law, had no authority to create peers or governments, or any thing out of the realm, by his great seal; and, therefore, our charters and commissions to governors, being under the great seal, gives us no more authority, nor binds us to any other duties, than if they had been given under the privy seal, or without any seal at all. Their binding force, both upon the crown and us, is wholly from compact and the law of nature.

There is another case in which the same sentiments are preserved.† "It was said by the master of the rolls to have been determined by the lords of the privy council, upon an appeal to the king in council from the foreign plantations; 1st. That if there be a new and uninhabited country, found out by English subjects, as the law is the birthright of every subject, so, wherever they go, they carry their laws with them, and, therefore, such new found country is to be governed by the laws of England; though after such country is inhabited by the English, acts of parliament made in England, without naming the foreign plantations, will not bind them; for which reason it has been determined, that the statute of frauds and perjuries, which requires three witnesses, and that these should subscribe in the testator's presence in the case of a devise of land, does not bind Barbadoes; but that, 2dly. Where the King of England conquers a country, it is a different consideration; for there the conqueror, by saving the lives of the people conquered, gains a right and property in such people! In consequence of which, he may impose upon them what laws he pleases; but, 3dly. Until such laws, given by the conquering prince, the laws and customs of the

* Salkeld, 510.

† It is in 2 P. Williams, 75, Memorandum, 9th August, 1722.

conquered country shall hold place; unless where these are contrary to our religion, or enact any thing that is *malum in se*, or are silent; for in all such cases the laws of the conquering country shall prevail."

NO. X.

Give me leave, now, to descend from these general matters to Massachusettensis. He says, "Ireland, who has perhaps the greatest possible subordinate legislature, and sends no members to the British parliament, is bound by its acts when expressly named." But if we are to consider what ought to be, as well as what is, why should Ireland have the greatest possible subordinate legislature? Is Ireland more numerous and more important to what is called the British empire than America? Subordinate as the Irish legislature is said to be, and a conquered country, as undoubtedly it is, the parliament of Great Britain, although they claim a power to bind Ireland by statutes, have never laid one farthing of tax upon it. They knew it would occasion resistance if they should. But the authority of parliament to bind Ireland at all, if it has any, is founded upon entirely a different principle from any that takes place in the case of America. It is founded on the consent and compact of the Irish by Poyning's law to be so governed, if it have any foundation at all; and this consent was given, and compact made, in consequence of a conquest.

In the reign of Henry II. of England, there were five distinct sovereignties in Ireland, — Munster, Leinster, Meath, Ulster, and Connaught, besides several small tribes. As the prince of any one of these petty states took the lead in war, he seemed to act, for the time being, as monarch of the island. About the year 1172, Roderic O'Connor, King of Connaught, was advanced to this preëminence. Henry had long cast a wishful eye upon Ireland; and now, partly to divert his subjects from the thoughts of Becket's murder, partly to appease the wrath of the pope for the same event, and partly to gratify his own ambition, he lays hold of a pretence, that the Irish had taken some natives of England and sold them for slaves, and applies to the pope for license to invade that island. Adrian III., an Englishman by

birth, who was then pontiff, and very clearly convinced in his own mind of his right to dispose of kingdoms and empires, was easily persuaded, by the prospect of Peter's pence, to act as emperor of the world, and make an addition to his ghostly jurisdiction of an island which, though converted to Christianity, had never acknowledged any subjection to the see of Rome. He issued a bull, premising that Henry had ever shown an anxious care to enlarge the church, and increase the saints on earth and in heaven; that his design upon Ireland proceeded from the same pious motives; that his application to the holy see was a sure earnest of success; that it was a point incontestable, that all Christian kingdoms belonged to the patrimony of St. Peter; that it was his duty to sow among them the seeds of the gospel, which might fructify to their eternal salvation. He exhorts Henry to invade Ireland, exterminate the vices of the natives, and oblige them to pay yearly, from every house, a penny to the see of Rome; gives him full right and entire authority over the whole island; and commands all to obey him as their sovereign.

Macmorrogh, a licentious scoundrel, who was king of Leinster, and had been driven from his kingdom for his tyranny by his own subjects, in conjunction with Ororic, king of Meath, who made war upon him for committing a rape upon his queen, applied to Henry for assistance to restore him, and promised to hold his kingdom in vassalage of the crown of England. Henry accepted the offer, and engaged in the enterprise. It is unnecessary to recapitulate all the intrigues of Henry, to divide the Irish kingdoms among themselves, and set one against another, which are as curious as those of Edward I. to divide the kingdom of Wales, and play Lewellyn's brothers against him, or as those of the ministry, and our junto, to divide the American colonies, who have more sense than to be divided. It is sufficient to say, that Henry's expeditions terminated, altogether by means of those divisions among the Irish, in the total conquest of Ireland, and its annexation forever to the English crown. By the annexation of all Ireland to the English crown, I mean that all the princes and petty sovereigns of Ireland agreed to become vassals of the English crown. But what was the consequence of this? The same consequence was drawn, by the kings of England in this case, as had been drawn in the case of

Wales after the conquest of Lewellyn; namely,—that Ireland was become part of the *property*, *possession*, or *revenue* of the English crown, and that its authority over it was absolute and without control.

That matter must be traced from step to step. The First monument we find in English records concerning Ireland, is a mere *rescriptum principis*, entitled *statutum Hiberniæ de coheredibus*, 14 Hen. III. A. D. 1229. "In the old abridgment, Title, Homage, this is said not to be a statute."* Mr. Cay very properly observes, that it is not an act of parliament.† In this rescript, the king informs certain *milites*, (adventurers, probably, in the conquest of Ireland, or their descendants,) who had doubts how lands holden by knights' service, descending to copartners within age, should be divided,—what is the law and custom in England with regard to this.

But the record itself shows it to be a royal rescript only. "*Rex dilecto et fideli suo Gerardo fil' Mauricii Justic' suo Hiberniæ salutem. Quia tales milites, de partibus Hiberniæ nuper ad nos accedentes, nobis ostenderunt, quod, &c. Et a nobis petierunt, inde certiorari qualiter in regno nostro Angliæ, in casu consimili, hactenus usitatum sit, &c.*" He then goes on, and certifies what the law in England was, and then concludes:—"*Et ideo vobis mandamus, quod prædictas consuetudines in hoc casu, quas in regno nostro Angliæ habemus, ut prædictum est, in terra nostra Hiberniæ proclamari et firmiter teneri, fac, &c.*"

Here again we find the king conducting himself exactly as Edward I. did in Wales, after the conquest of Wales. Ireland had now been annexed to the English crown many years, yet parliament was not allowed to have obtained any jurisdiction over it; and Henry ordained laws for it by his sole and absolute authority, as Edward I. did by the statute of Wales. Another incontestable proof that annexing a country to the crown of England does not annex it to the realm, or subject it to parliament. But we shall find innumerable proofs of this.

Another incontestable proof of this, is the *Ordinatio pro statu Hiberniæ* made 17 Edward I. 1288.

This is an ordinance made by the king, by advice of his council, for the government of Ireland. "Edward, by the grace of

* *Vide* Ruffhead's *Statutes at Large*, v. i. 15.
† *Vide* Barrington's *Observations on the Statutes*, p. 34.

God, King of England, Lord of Ireland, &c., to all those who shall see or hear these letters, doth send salutation." He then goes on, and ordains many regulations, among which the seventh chapter is, — "That none of our officers shall receive an original writ pleadable at the common law, but such as be sealed by the great seal of Ireland," &c. This ordinance concludes, — "In witness whereof, we have caused these our letters-patents to be made. Dated at Nottingham, 24th November, 17th year of our reign."

This law, if it was passed in parliament, was never considered to have any more binding force than if it had been made only by the king. By Poyning's law, indeed, in the reign of Henry VII., all precedent English statutes are made to bind in Ireland, and this among the rest; but until Poyning's law it had no validity as an act of parliament, and was never executed but in the English pale; for, notwithstanding all that is said of the total conquest by Henry II., yet it did not extend much beyond the neighborhood of Dublin, and the conqueror could not enforce his laws and regulations much further.

"There is a note on the roll of 21 Edward I. in these words: — '*Et memorandum quod istud statutum, de verbo ad verbum, missum fuit in Hiberniam, teste rege apud Kenynton*, 14 *die Augusti, anno regni sui vicesimo septimo; et mandatum fuit Johanni Wogan, Justiciario Hiberniæ, quod prædictum statutum per Hiberniam, in locis quibus expedire viderit, legi et publicè proclamari ac firmiter teneri faciat.*'

"This note most fully proves, that it was supposed the king, by his sole authority, could then introduce any English law; and will that authority be lessened by the concurrence of the two houses of parliament? . . . There is also an order of Charles I., in the third year of his reign, to the treasurers and chancellors of the exchequer, both of England and Ireland, by which they are directed to increase the duties upon Irish exports; which shows that it was then imagined the king could tax Ireland by his prerogative, without the intervention of parliament."*

Another instance to show, that the king, by his sole authority, whenever he pleased, made regulations for the government of Ireland, notwithstanding it was annexed and subject to the

* *Observations on the Statutes*, p. 127.

crown of England, is the *ordinatio facta pro statu terræ Hiberniæ*, in the 31 Edward I., in the appendix to Ruffhead's statutes. This is an extensive code of laws, made for the government of the Irish church and state, by the king alone, without lords or commons. The kings "*volumus et firmiter præcipimus*," governs and establishes all; and, among other things, he introduces, by the eighteenth chapter, the English laws for the regimen of persons of English extract settled in Ireland.

The next appearance of Ireland in the statutes of England is in the 34 Edward III. c. 17. This is no more than a concession of the king to his lords and commons of England, in these words: "*Item*, it is accorded, that all the merchants, as well aliens as denizens, may come into Ireland with their merchandises, and from thence freely to return with their merchandises and victuals, without fine or ransom to be taken of them, saving always to the king his ancient customs and other duties." And, by chapter 18: "*Item*, that the people of England, as well religious as other, which have their heritage and possessions in Ireland, may bring their corn, beasts, and victuals to the said land of Ireland, and from thence to re-carry their goods and merchandises into England, freely without impeachment, paying their customs and devoirs to the king."

All this is no more than an agreement between the king and his English subjects, lords, and commons, that there should be a free trade between the two islands and that one of them should be free for strangers. But it is no color of proof, that the king could not govern Ireland without his English lords and commons.

The 1 Henry V. c. 8: "All Irishmen and Irish clerks, beggars, shall depart this realm before the first day of November, except graduates, sergeants, &c." is explained by 1 Henry VI. c. 3, which shows "what sort of Irishmen only may come to dwell in England." It enacts, that all persons born in Ireland shall depart out of the realm of England, except a few; and that Irishmen shall not be principals of any hall, and that Irishmen shall bring testimonials from the lieutenant or justice of Ireland, that they are of the king's obeisance. By the 2d Henry VI. c. 8, "Irishmen resorting into the realm of England, shall put in surety for their good abearing."

Thus, I have cursorily mentioned every law made by the King

of England, whether in parliament or out of it, for the government of Ireland, from the conquest of it by Henry II., in 1172, down to the reign of Henry VII., when an express contract was made between the two kingdoms, that Ireland should, for the future, be bound by English acts of parliament in which it should be specially named. This contract was made in 1495; so that, upon the whole, it appears beyond dispute, that, for more than three hundred years, though a conquered country, and annexed to the crown of England, yet, it was so far from being annexed to, or parcel of the realm, that the king's power was absolute there, and he might govern it without his English parliament, whose advice concerning it he was under no obligation to ask or pursue.

The contract I here alluded to, is what is called Poyning's law, the history of which is briefly this: Ireland revolted from England, or rather adhered to the partisans of the house of York; and Sir Edward Poyning was sent over about the year 1495, by King Henry VII., with very extensive powers *over the civil as well as military administration.* On his arrival, he made severe inquisition about the disaffected, and in particular attacked the Earls of Desmond and Kildare. The first stood upon the defensive, and eluded the power of the deputy; but Kildare was sent prisoner to England; *not to be executed, it seems, nor to be tried upon the statute of Henry VIII.*, but to be dismissed, as he actually was, to his own country, with marks of the King's esteem and favor; Henry judging that, at such a juncture, he should gain more by clemency and indulgence, than by rigor and severity. In this opinion, he sent a commissioner to Ireland with a formal amnesty in favor of Desmond and all his adherents, whom the tools of his ministers did not fail to call traitors and rebels, with as good a grace and as much benevolence, as Massachusettensis discovers.

Let me stop here and inquire, whether Lord North has more wisdom than Henry VII., or whether he took the hint from the history of Poyning, of sending General Gage, with his civil and military powers. If he did, he certainly did not imitate Henry, in his blustering menaces against certain "ringleaders and forerunners."

While Poyning resided in Ireland, he called a parliament, which is famous in history for the acts which it passed in favor

of England and Englishmen settled in Ireland. By these, which are still called Poyning's laws, all the former laws of England were made to be of force in Ireland, and no bill can be introduced into the Irish parliament unless it previously receive the sanction of the English privy council; and by a construction, if not by the express words, of these laws, Ireland is still said to be bound by English statutes in which it is specially named. Here, then, let Massachusettensis pause, and observe the original of the notion, that countries might be bound by acts of parliament, if "specially named," though without the realm. Let him observe, too, that this notion is grounded entirely on the voluntary act, the free consent of the Irish nation, and an act of an Irish parliament, called Poyning's law. Let me ask him, has any colony in America ever made a Poyning's act? Have they ever consented to be bound by acts of parliament, if specially named? Have they ever acquiesced in, or implicitly consented to any acts of parliament, but such as are *bonâ fide* made for the regulation of trade? This idea of binding countries without the realm "by specially naming" them, is not an idea taken from the common law. There was no such principle, rule, or maxim, in that law. It must be by statute law, then, or none. In the case of Wales and Ireland, it was introduced by solemn compact, and established by statutes to which the Welsh and Irish were parties, and expressly consented. But in the case of America there is no such statute; and therefore Americans are bound by statutes in which they are "named," no more than by those in which they are not.

The principle upon which Ireland is bound by English statutes, in which it is named, is this, that being a conquered country, and subject to the mere will of the king, it voluntarily consented to be so bound. This appears in part already, and more fully in Blackstone, who tells us "that Ireland is a distinct, though a dependent, subordinate kingdom." But how came it dependent and subordinate? He tells us, that "King John, in the twelfth year of his reign, after the conquest, went into Ireland, carried over with him many able sages of the law; and there by his letters-patent, in right of the dominion of conquest, is said to have ordained and established that Ireland should be governed by the laws of England; which letters-patent Sir Edward Coke apprehends to have been there confirmed in parliament. . . . By

the same rule, that no laws made in England between King John's time and Poyning's law were then binding in Ireland, it follows, that no acts of the English parliament, made since the tenth of Henry VII., do now bind the people of Ireland, unless specially named, or included under general words. And on the other hand, it is equally clear, that where Ireland is particularly named, or is included under general words, they are bound by such acts of parliament. For this follows from the very nature and constitution of a dependent state; dependence being very little else but an obligation to conform to the will or law of that superior person or state upon which the inferior depends. The original and true ground of this superiority in the present case, is what we usually call, though somewhat improperly, the right of conquest; a right allowed by the law of nations, if not by that of nature; but which in reason and civil policy can mean nothing more than that, in order to put an end to hostilities, a compact is either expressly or tacitly made between the conqueror and the conquered, that if they will acknowledge the victor for their master, he will treat them for the future as subjects, and not as enemies."

These are the principles upon which the dependence and subordination of Ireland are founded. Whether they are just or not is not necessary for us to inquire. The Irish nation have never been entirely convinced of their justice, have been ever discontented with them, and ripe and ready to dispute them. Their reasonings have been ever answered by the *ratio ultima* and *penultima* of the tories; and it requires, to this hour, no less than a standing army of twelve thousand men to confute them, as little as the British parliament exercises the right, which it claims, of binding them by statutes, and although it never once attempted or presumed to tax them, and although they are so greatly inferior to Britain in power, and so near in situation.

But thus much is certain, that none of these principles take place in the case of America. She never was conquered by Britain. She never consented to be a state dependent upon, or subordinate to the British parliament, excepting only in the regulation of her commerce; and therefore the reasonings of British writers upon the case of Ireland are not applicable to the case of the colonies, any more than those upon the case of Wales.

Thus have I rambled after Massachusettensis through Wales

and Ireland, but have not reached my journey's end. I have yet to travel through Jersey, Guernsey, and I know not where. At present, I shall conclude with one observation. In the history of Ireland and Wales, though undoubtedly conquered countries, and under the very eye and arm of England, the extreme difficulty, the utter impracticability of governing a people who have any sense, spirit, or love of liberty, without incorporating them into the state, or allowing them in some other way equal privileges, may be clearly seen. Wales was forever revolting, for a thousand years, until it obtained that mighty blessing. Ireland has been frequently revolting, although the most essential power of a supreme legislature, that of imposing taxes, has never been exercised over them; and it cannot now be kept under but by force. And it would revolt forever if parliament should tax them. What kind of an opinion, then, must the ministry entertain of America, — when her distance is so great, her territory so extensive, her commerce so important; not a conquered country, but dearly purchased and defended; when her trade is so essential to the navy, the commerce, the revenue, the very existence of Great Britain as an independent state? They must think America inhabited by three millions of fools and cowards.

NO. XI.

The cases of Wales and Ireland are not yet exhausted. They afford such irrefragable proofs, that there is a distinction between the crown and realm, and that a country may be annexed and subject to the former, and not to the latter, that they ought to be thoroughly studied and understood.

The more these cases, as well as those of Chester, Durham, Jersey, Guernsey, Calais, Gascogne, Guienne, &c. are examined, the more clearly it will appear, that there is no precedent in English records, no rule of common law, no provision in the English constitution, no policy in the English or British government, for the case of the colonies; and, therefore, that we derive our laws and government solely from our own compacts with Britain and her kings, and from the great Legislator of the universe.

We ought to be cautious of the inaccuracies of the greatest

men, for these are apt to lead us astray. Lord Coke* says: "Wales was some time a kingdom, as it appeareth by 19 Henry VI. fol. 6, and by the act of parliament of 2 Henry V. cap. 6; but while it was a kingdom, the same was holden and within the fee of the King of England; and this appeareth by our books, Fleta, lib. 1, cap. 16; 1 Edward III. 14; 8 Edward III. 59; 13 Edward III., tit. Jurisdict.; 10 Henry IV. 6; Plow. Com. 368. And in this respect, in divers ancient charters, kings of old time styled themselves in several manners, as King Edgar, Britanniæ Basileus; Etheldredus, Totius Albionis Dei providentia Imperator; Edredus, magnæ Britanniæ Monarcha, which, among many others of like nature, I have seen. But, by the statute of 12 Edward I. Wales was united and incorporated into England, and made parcel of England in possession; and, therefore, it is ruled, in 7 Henry IV. fol. 13, that no protection doth lie, *quia moratur in Wallia*, because Wales is within the realm of England. And where it is recited, in the act of 27 Henry VIII., *that Wales was ever parcel of the realm of England*, it is true in this sense, namely, — that before 12 Edward I. it was parcel in tenure, and since, *it is parcel of the body of the realm.* And whosoever is born within the fee of the King of England, though it be in another kingdom, is a natural-born subject, and capable and inheritable of lands in England, as it appeareth in Plow. Com. 126. And, therefore, those that were born in Wales before 12 Edward I., whilst it was only holden of England, were capable and inheritable of lands in England."

Where my Lord Coke, or any other sage, shows us the ground on which his opinion stands, we can judge for ourselves, whether the ground is good and his opinion just. And, if we examine by this rule, we shall find in the foregoing words, several palpable inaccuracies of expression: 1. By the 12 E. I., (which is the *statutum Walliae* quoted by me before,) it is certain "that Wales was not united and incorporated into England, and made parcel of England." It was annexed and united to the crown of England only. It was done by the king's sole and absolute authority; not by an act of parliament, but by a mere *constitutio imperatoria*, and neither Edward I. nor any of his successors ever would relinquish the right of ruling it by mere will and discre-

* 7 Rep. 21 b.

tion, until the reign of James I. 2. It is not recited in the 27 H. VIII., that Wales was ever parcel of the realm of England. The words of that statute are, "incorporated, annexed, united, and subject to, and under the imperial crown of this realm," which is a decisive proof, that a country may be annexed to the one without being united with the other. And this appears fully in Lord Coke himself:* "Ireland originally came to the kings of England by conquest; but who was the first conqueror thereof hath been a question. I have seen a charter made by King Edgar, in these words: *Ego Edgarus Anglorum Basileus, omniumque insularum oceani, quæ Britanniam circumjacent, imperator et dominus, gratias ago ipsi Deo omnipotenti regi meo, qui meum imperium sic ampliavit et exaltavit super regnum patrum meorum*, &c. *Mihi concessit propitia divinitas, cum anglorum imperio omnia regna insularum oceani*, &c., *cum suis ferocissimis regibus usque Norvegiam, maximamque partem Hiberniæ, cum sua nobilissima civitate de Dublina, Anglorum regno subjugare, quapropter et ego Christi gloriam et laudem in regno meo exaltare, et ejus servitium amplificare devotus disposui*, &c. Yet for that it was wholly conquered in the reign of Henry II., the honor of the conquest of Ireland is attributed to him. That Ireland is a dominion separate and divided from England it is evident from our books, 20 H. VI. 8; Sir John Pilkington's case, 32 H. VI. 25; 20 Eliz.; Dyer, 360; Plow. Com. 360, and 2 R. 3, 12: *Hibernia habet parliamentum, et faciunt leges, et statuta nostra non ligant eos quia non mittunt milites ad parliamentum*, (which is to be understood, unless they be specially named,) *sed personæ eorum sunt subjecti regis, sicut inhabitantes in Calesia, Gasconia, et Guyan.* Wherein it is to be observed, that the Irishman (as to his subjection) is compared to men born in Calice, Gascoin, and Guienne. Concerning their laws, *Ex rotulis petentium, de anno* 11 Regis H. III., there is a charter which that king made, beginning in these words: *Rex Baronibus, Militibus et omnibus libere tenentibus L. salutem. Satis, ut credimus vestra audivit discretio, quod quando bonæ memoriæ Johannes quondam rex Angliæ, pater noster venit in Hiberniam, ipse duxit secum viros discretos et legis peritos, quorum communi consilio et ad instantiam Hibernensium statuit et præcepit leges Anglicanas in Hibernia, ita quod leges easdem in scripturas*

* 7 Rep. 22 b.

redactas reliquit sub sigillo suo ad saccarium Dublin'. So, as now, the laws of England became the proper laws of Ireland; and, therefore, because they have parliaments holden there, whereat they have made diverse particular laws concerning that dominion, as it appeareth in 20 Henry VI. 8, and 20 Elizabeth, Dyer, 360, and for that they retain unto this day divers of their ancient customs, the book in 20 Henry VI. 8, holdeth that Ireland is governed by laws and customs separate and diverse from the laws of England. A voyage royal may be made into Ireland. *Vid.* 11 Henry IV. 7, and 7 Edward IV. 4, 27, which proveth it a distinct dominion. And in anno 33 Elizabeth, it was resolved by all the judges of England, in the case of O'Rurke, an Irishman, who had committed high treason in Ireland, that he, by the statute of 23 Henry VIII. c. 23, might be indicted, arraigned, and tried for the same in England, according to the purview of that statute; the words of which statute be, 'that all treasons, &c. committed by any person out of the realm of England, shall be from henceforth inquired of, &c.' And they all resolved, (as afterwards they did also in Sir John Perrot's case,) that Ireland was out of the realm of England, and that treasons committed there were to be tried within England by that statute. In the statute of 4 Henry VII. c. 24, of fines, provision is made for them that be out of this land; and it is holden in Plow. Com., in Stowell's case, 375, that he that is in Ireland is out of this land, and consequently within that proviso. Might not, then, the like plea be devised as well against any person born in Ireland as (this is against Calvin, that is, a *Postnatus*) in Scotland? For the Irishman is born *extra ligeantiam regis, regni sui Angliæ*, &c., which be *verba operativa* in the plea. But all men know that they are natural born subjects, and capable of and inheritable to lands in England."

I have been at the pains of transcribing this long passage, for the sake of a variety of important observations that may be made upon it.

1. That exuberance of proof that is in it, both that Ireland is annexed to the crown, and that it is not annexed to the realm, of England.

2. That the reasoning in the year book, that Ireland has a parliament, and makes laws, and our statutes do not bind them, because they do not send knights to parliament, is universal, and

concludes against those statutes binding in which Ireland is specially named, as much as against those in which it is not; and therefore Lord Coke's parenthesis "(which is to be understood, unless they be specially named)" is wholly arbitrary and groundless, unless it goes upon the supposition that the king is absolute in Ireland, it being a conquered country, and so has power to bind it at his pleasure, by an act of parliament, or by an edict; or unless it goes upon the supposition of Blackstone, that there had been an express agreement and consent of the Irish nation to be bound by acts of the English parliament; and in either case it is not applicable even by analogy to America; because that is not a conquered country, and most certainly never consented to be bound by all acts of parliament in which it should be named.

3. That the instance, request, and consent of the Irish is stated, as a ground upon which King John, and his discreet law-sages, first established the laws of England in Ireland.

4. The resolution of the judges in the cases of O'Rurke and Perrot, is express, that Ireland was without the realm of England; and the late resolutions of both houses of parliament, and the late opinion of the judges, that Americans may be sent to England upon the same statute to be tried for treason, is also express that America is out of the realm of England. So that we see what is to become of us, my friends. When they want to get our money by taxing us, our privileges by annihilating our charters, and to screen those from punishment who shall murder us at their command, then we are told that we are within the realm; but when they want to draw, hang, and quarter us, for honestly defending those liberties which God and compact have given and secured to us, — oh! then we are clearly out of the realm.

5. In Stowell's case, it is resolved that Ireland is out of the land, that is, the land of England. The consequence is, that it was out of the reach and extent of the law of the land, that is, the common law. America surely is still further removed from that land, and therefore is without the jurisdiction of that law, which is called the law of the land in England. I think it must appear by this time, that America is not parcel of the realm, state, kingdom, government, empire, or land of England, or Great Britain, in any sense which can make it subject universally to the supreme legislature of that island.

But for the sake of curiosity, and for the purpose of showing, that the consent even of a conquered people has always been carefully conciliated, I beg leave to look over Lord Coke's 4 Inst. p. 12. "After King Henry II." says he, "had conquered Ireland, he fitted and transcribed this *modus*," meaning the ancient treatise called *modus tenendi parliamentum*, which was rehearsed and declared before the conqueror at the time of the conquest, and by him approved for England, "into Ireland, in a parchment roll, for the holding of parliaments there, which, no doubt, H. II. did by advice of his judges, &c. This *modus*, &c. was, *anno* 6, H. IV., in the custody of Sir Christopher Preston, which roll H. IV., in the same year, *de assensu Johannis Talbot, Chevalier*, his lieutenant there, and of his council of Ireland, exemplified, &c."

Here we see the original of a parliament in Ireland, which is assigned as the cause or reason why Ireland is a distant kingdom from England; and in the same, 4 Inst. 349, we find more evidence that all this was done at the instance and request of the people in Ireland. Lord Coke says, — "H. II., the father of King John, did ordain and command at the instance of the Irish, that such laws as he had in England should be of force and observed in Ireland. Hereby Ireland, being of itself a distinct dominion, and no part of the kingdom of England, (as it directly appeareth by many authorities in Calvin's case,) was to have parliaments holden there, as England, &c." See the record, as quoted by Lord Coke in the same page, which shows that even this establishment of English laws was made *de communi omnium de Hibernia consensu.*

This whole chapter is well worth attending to; because the records quoted in it show how careful the ancients were to obtain the consent of the governed to all laws, though a conquered people, and the king absolute. Very unlike the minister of our era, who is for pulling down and building up the most sacred establishments of laws and government, without the least regard to the consent or good-will of Americans. There is one observation more of Lord Coke that deserves particular notice. "Sometimes the king of England called his nobles of Ireland to come to his parliament of England, &c.; and by special words the parliament of England may bind the subjects of Ireland;" and cites the record, 8 E. II., and subjoins "an excellent precedent to be fol-

lowed whensoever any act of parliament shall be made in England concerning the state of Ireland, &c." By this, Lord Coke seems to intimate an opinion, that representatives had been, and ought to be, called from Ireland to the parliament of England, whenever it undertook to govern it by statutes in which it should be specially named.

After all, I believe there is no evidence of any express contract of the Irish nation, to be governed by the English parliament, and very little of an implied one; that the notion of binding it by acts in which it is expressly named is merely arbitrary; and that this nation, which has ever had many and great virtues, has been most grievously oppressed. And it is to this day so greatly injured and oppressed, that I wonder American committees of correspondence and congresses have not attended more to it than they have. Perhaps in some future time they may. But I am running beyond my line.

We must now turn to Burrow's Reports.* Lord Mansfield has many observations upon the case of Wales, which ought not to be overlooked. He says, — "Edward I. conceived the great design of annexing all other parts of the island of Great Britain to the realm of England. The better to effectuate his idea, as time should offer occasion, he maintained, 'that all the parts thereof not in his own hands or possession, were holden of his crown.' The consequence of this doctrine was, that by the feudal law supreme jurisdiction resulted to him, in right of his crown, as sovereign lord, in many cases which he might lay hold of; and when the said territories should come into his hands and possession, they would come back as parcel of the realm of England, from which (by fiction of law at least) they had been originally severed. This doctrine was literally true as to the counties palatine of Chester and Durham. But (no matter upon what foundation) he maintained that the principality of Wales was holden of the imperial crown of England; he treated the Prince of Wales as a rebellious vassal, subdued him, and took possession of the principality. Whereupon, on the fourth of December, in the ninth year of his reign, he issued a commission to inquire '*per quas leges, et per quas consuetudines antecessores nostri reges regere consueverant principem Walliae et barones Wallenses Walliae et*

* Vol. ii. 834. Rex *v.* Cowle.

pares suos et alios in priores et eorum pares, &c.' If the principality was feudatory, the conclusion necessarily followed, that it was under the government of the king's laws, and the king's courts, in cases proper for them to interpose, though (like counties palatine) they had peculiar laws and customs, *jura regalia*, and complete jurisdiction at home." There was a writ at the same time issued to all his officers in Wales, to give information to the commissioners; and there were fourteen interrogatories, specifying the points to be inquired into. The statute of Rutland, 12 E. I., refers to this inquiry. By that statute he does not annex Wales to England, but recites it as a consequence of its coming into his hands:—"Divina providentia terram Walliæ, prius nobis jure feodali subjectam, jam in proprietatis nostræ dominium convertit, et coronæ regni Angliæ, tanquam partem corporis ejusdem, annexuit et univit." The 27 H. VIII. c. 26, adheres to the same plan, and recites that "Wales ever hath been incorporated, annexed, united, and subject to, and under, the imperial crown of this realm, as a very member and joint of the same." Edward I., having succeeded as to Wales, maintained likewise that Scotland was holden of the crown of England. This opinion of the court was delivered by Lord Mansfield in the year 1759. In conformity to the *system* contained in these words, my Lord Mansfield and my Lord North, together with their little friends, Bernard and Hutchinson, have "conceived the great design of annexing" all North America "to the realm of England;" and "the better to effectuate this idea, they all maintain that North America is holden of the crown."

And, no matter upon what foundation, they all maintained, that America is dependent on the imperial crown and parliament of Great Britain; and they are all very eagerly desirous of treating the Americans as rebellious vassals, to subdue them, and take possession of their country. And when they do, no doubt America will come back as parcel of the realm of England, from which, by fiction of law at least, or by virtual representation, or by some other dream of a shadow of a shade, they had been originally severed.

But these noblemen and ignoblemen ought to have considered, that Americans understand the laws and the politics as well as themselves, and that there are six hundred thousand men in it, between sixteen and sixty years of age; and therefore it will be

very difficult to chicane them out of their liberties by "fictions of law," and "no matter upon what foundation."

Methinks I hear his lordship, upon this occasion, in a soliloquy somewhat like this: "We are now in the midst of a war, which has been conducted with unexampled success and glory. We have conquered a great part, and shall soon complete the conquest of the French power in America. His majesty is near seventy years of age, and must soon yield to nature. The amiable, virtuous, and promising successor, educated under the care of my nearest friends, will be influenced by our advice. We must bring the war to a conclusion; for we have not the martial spirit and abilities of the great commoner;[1] but we shall be obliged to leave upon the nation an immense debt. How shall we manage that? Why, I have seen letters from America, proposing that parliament should bring America to a closer dependence upon it, and representing that if it does not, she will fall a prey to some foreign power, or set up for herself. These hints may be improved, and a vast revenue drawn from that country and the East Indies, or at least the people here may be flattered and quieted with the hopes of it. It is the duty of a judge to declare law; but under this pretence, many, we know, have given law or made law, and none in all the records of Westminster Hall more than of late. Enough has been already made, if it is wisely improved by others, to overturn this constitution. Upon this occasion, I will accommodate my expressions to such a design upon America and Asia, and will so accommodate both law and fact, that they may hereafter be improved to admirable effect in promoting our design." This is all romance, no doubt, but it has as good a moral as most romances. For, first, — it is an utter mistake, that Edward I. conceived the great design of annexing all to England, as one state, under one legislature. He conceived the design of annexing Wales, &c. to his crown. He did not pretend that it was before subject to the crown, but to him. "*Nobis jure feodali*" are his words. And when he annexes it to his crown, he does it by an edict of his own, not an act of parliament; and he never did, in his whole life, allow that his parliament, that is, his lords and commons, had any authority over it, or that he was obliged to take or ask their advice, in any one instance, concerning the

[1] The name by which the elder Pitt was, for some time, described in England.

management of it, nor did any of his successors for centuries. It was not Edward I., but Henry VII., who first conceived the great design of annexing it to the realm; and by him and Henry VIII. it was done in part, but never completed until James I. There is a sense, indeed, in which annexing a territory to the crown is annexing it to the realm, as putting a crown upon a man's head is putting it on the man, but it does not make it a part of the man. Second, — his lordship mentions the statute of Rutland; but this was not an act of parliament, and therefore could not annex Wales to the realm, if the king had intended it; for it never was in the power of the king alone to annex a country to the realm. This cannot be done but by act of parliament. As to Edward's treating the Prince of Wales as a "rebellious vassal," this was arbitrary, and is spoken of by all historians as an infamous piece of tyranny.

Edward I. and Henry VIII. both considered Wales as the property and revenue of the crown, not as a part of the realm; and the expressions "*coronæ regni Angliæ, tanquam partem corporis ejusdem*," signified "as part of the same body," that is, of the same "crown," not "realm" or "kingdom;" and the expressions in 27 H. VIII., "under the imperial crown of this realm, as a very member and joint of the same," mean as a member and joint of the "imperial crown," not of the realm. For the whole history of the principality, the acts of kings, parliaments, and people show, that Wales never was entitled, by this annexation, to the laws of England, nor was bound to obey them. The case of Ireland is enough to prove that the crown and realm are not the same. For Ireland is certainly annexed to the crown of England, and it certainly is not annexed to the realm.

There is one paragraph in the foregoing words of Lord Mansfield, which was quoted by his admirer, Governor Hutchinson, in his dispute with the house, with a profound compliment; "He did not know a greater authority," &c. But let the authority be as great as it will, the doctrine will not bear the test.

"If the principality was feudatory, the conclusion necessarily follows, that it was under the government of the king's laws." Ireland is feudatory to the crown of England; but would not be subject to the king's English laws without its consent and compact. An estate may be feudatory to a lord, a country may be feudatory to a sovereign lord, upon all possible variety of con-

ditions; it may be, only to render homage; it may be to render a rent; it may be to pay a tribute; if his lordship by *feudatory* means the original notion of feuds, it is true that the king, the general imperator, was absolute, and the tenant held his estate only at will, and the subject, not only his estate, but his person and life, at his will. But this notion of feuds had been relaxed in an infinite variety of degrees; in some, the estate is held at will, in others for life, in others for years, in others forever, to heirs, &c.; in some to be governed by the prince alone, in some by princes and nobles, and in some by prince, nobles, and commons, &c. So that being feudatory by no means proves that English lords and commons have any share in the government over us. As to counties palatine, these were not only holden of the king and crown, but were erected by express acts of parliament, and, therefore, were never exempted from the authority of parliament. The same parliament which erected the county palatine, and gave it its *jura regalia* and complete jurisdiction, might unmake it, and take away those regalia and jurisdiction. But American governments and constitutions were never erected by parliament; their *regalia* and jurisdiction were not given by parliament, and, therefore, parliament have no authority to take them away.

But, if the colonies are feudatory to the kings of England, and subject to the government of the king's laws, it is only to such laws as are made in their general assemblies, their provincial legislatures.

NO. XII.

We now come to Jersey and Guernsey, which Massachusettensis says, "are no part of the realm of England, nor are they represented in parliament, but are subject to its authority." A little knowledge of this subject will do us no harm; and, as soon as we shall acquire it, we shall be satisfied how these islands came to be subject to the authority of parliament. It is either upon the principle that the king is absolute there, and has a right to make laws for them by his mere will, and, therefore, may express his will by an act of parliament, or an edict, at his pleasure; or it is an usurpation. If it is an usurpation, it ought not to be a precedent for the colonies; but it ought to be re-

formed, and they ought to be incorporated into the realm by act of parliament and their own act. Their situation is no objection to this. Ours is an insurmountable obstacle.

Thus, we see, that in every instance which can be found, the observation proves to be true, that, by the common law, the laws of England, the authority of parliament, and the limits of the realm, were confined within seas. That the kings of England had frequently foreign dominions, some by conquest, some by marriage, and some by descent. But, in all those cases, the kings were either absolute in those dominions, or bound to govern them according to their own respective laws, and by their own legislative and executive councils. That the laws of England did not extend there, and the English parliament pretended no jurisdiction there, nor claimed any right to control the king in his government of those dominions. And, from this extensive survey of all the foregoing cases, there results a confirmation of what has been so often said, that there is no provision in the common law, in English precedents, in the English government or constitution, made for the case of the colonies. It is not a conquered, but a discovered country. It came not to the king by descent, but was explored by the settlers. It came not by marriage to the king, but was purchased by the settlers of the savages. It was not granted by the king of his grace, but was dearly, very dearly earned by the planters, in the labor, blood, and treasure which they expended to subdue it to cultivation. It stands upon no grounds, then, of law or policy, but what are found in the law of nature, and their express contracts in their charters, and their implied contracts in the commissions to governors and terms of settlement.

The cases of Chester and Durham, counties palatine within the realm, shall conclude this fatiguing ramble. Chester was an earldom and a county; and in the 21st year of King Richard II. A. D. 1397, it was, by an act of parliament, erected into a principality, and several castles and towns were annexed to it, saving to the king the rights of his crown. This was a county palatine, and had *jura regalia* before this erection of it into a principality. But the statute which made it a principality, was again repealed by 1 Henry IV. c. 3, and in 1399, by the 1 Henry IV. c. 18. Grievous complaints were made to the king, in parliament, of murders, manslaughters, robberies, batteries, riots, &c.

done by people of the county of Chester in divers counties of England. For remedy of which it is enacted, "that if any person of the county of Chester commit any murder or felony in any place out of that county, process shall be made against him by the common law, till the exigent, in the county where such murder or felony was done; and if he flee into the county of Chester, and be outlawed and put in exigent for such murder or felony, the same outlawry or exigent shall be certified to the officers and ministers of the same county of Chester, and the same felon shall be taken, his lands and goods within that county shall be seized as forfeit into the hands of the prince, or of him that shall be lord of the same county of Chester for the time, and the king shall have the year and day, and the waste; and the other lands and goods of such felon, out of said county, shall remain wholly to the king, &c. as forfeit." And a similar provision, in case of battery or trespass, &c.

Considering the great seal of England and the process of the king's courts did not run into Chester, it was natural that malefactors should take refuge there, and escape punishment, and, therefore, a statute like this was of indispensable necessity; and, afterwards, in 1535, another statute was made, 27 Henry VIII. c. 5, for the making of justices of the peace within Chester, &c. It recites, "the king, considering the manifold robberies, murders, thefts, trespasses, riots, routs, embraceries, maintenances, oppressions, ruptures of his peace, &c., which have been daily done within his county palatine of Chester, &c., by reason that common justice hath not been indifferently ministered there, like and in such form as it is in other places of this his realm, by reason whereof the said crimes have remained unpunished; for redress whereof, and to the intent that one order of law should be had, the king is empowered to constitute justices of peace, quorum, and gaol delivery in Chester," &c.

By the 32 Henry VIII. c. 43, another act was made concerning the county palatine of Chester, for shire days.

These three acts soon excited discontent in Chester. They had enjoyed an exemption from the king's English courts, legislative and executive, and they had no representatives in the English parliament, and, therefore, they thought it a violation of their rights, to be subjected even to those three statutes, as reasonable and absolutely necessary as they appear to have been. And,

accordingly, we find, in 1542, 34 and 35 Henry VIII. c. 13, a zealous petition to be represented in parliament, and an act was made for making of knights and burgesses within the county and city of Chester. It recites a part of the petition to the king, from the inhabitants of Chester, stating, "that the county palatine had been excluded from parliament, to have any knights and burgesses there; by reason whereof, the said inhabitants have hitherto sustained manifold disherisons, losses, and damages, as well in their lands, goods, and bodies, as in the good civil and politic governance and maintenance of the commonwealth of their said country; and, forasmuch as the said inhabitants have always hitherto been bound by the acts and statutes, made by your highness and progenitors in said court," (meaning when expressly named, not otherwise,) "as far forth as other counties, cities, and boroughs, which have had knights and burgesses, and yet have had neither knight nor burgess there, for the said county palatine; the said inhabitants, for lack thereof, have been oftentimes touched and grieved with acts and statutes made within the said court, as well derogatory unto the most ancient jurisdictions, liberties, and privileges of your said county palatine, as prejudicial unto the common weal, quietness, rest, and peace of your subjects, &c." For remedy whereof, two knights of the shire and two burgesses for the city are established.

I have before recited all the acts of parliament which were ever made to meddle with Chester, except the 51 Henry III. stat. 5, in 1266, which only provides that the justices of Chester and other bailiffs shall be answerable in the exchequer, for wards, escheats, and other bailiwicks; yet Chester was never severed from the crown or realm of England, nor ever expressly exempted from the authority of parliament; yet, as they had generally enjoyed an exemption from the exercise of the authority of parliament, we see how soon they complain of it as grievous, and claim a representation as a right; and we see how readily it was granted. America, on the contrary, is not in the realm; never was subject to the authority of parliament by any principle of law; is so far from Great Britain that she never can be represented; yet, she is to be bound in all cases whatsoever!

The first statute which appears in which Durham is named, is 27 Henry VIII. c. 24, § 21; Cuthbert, Bishop of Durham, and his successors, and their temporal chancellor of the county palatine

of Durham, are made justices of the peace. The next is 31 Elizabeth, c. 9, and recites, that "Durham is, and of long time hath been, an ancient county palatine, in which the Queen's writ hath not, nor yet doth run." It enacts that a writ of proclamation upon an exigent against any person dwelling in the bishopric shall run there for the future. And § 5 confirms all the other liberties of the bishop and his officers.

And after this, we find no other mention of that bishopric in any statute until 25 Charles II. c. 9. This statute recites, "whereas, the inhabitants of the county palatine of Durham have not hitherto had the liberty and privilege of electing and sending any knights and burgesses to the high court of parliament, although the inhabitants of the said county palatine are liable to all payments, rates, and subsidies granted by parliament, equally with the inhabitants of other counties, cities, and boroughs, in this kingdom, who have their knights and burgesses in the parliament, and are therefore concerned equally with others, the inhabitants of this kingdom, to have knights and burgesses in the said high court of parliament, of their own election, to represent the condition of their county, as the inhabitants of other counties, cities, and boroughs of this kingdom have." It enacts two knights for the county, and two burgesses for the city. Here, it should be observed, that, although they acknowledge that they had been liable to all rates, &c. granted by parliament, yet none had actually been laid upon them before this statute.

Massachusettensis then comes to the first charter of this province; and he tells us, that in it we shall find irresistible evidence, that our being a part of the empire, subject to the supreme authority of the state, bound by its laws, and subject to its protection, were the very terms and conditions by which our ancestors held their lands and settled the province. This is roundly and warmly said, but there is more zeal in it than knowledge. As to our being part of the empire, it could not be the British empire, as it is called, because that was not then in being, but was created seventy or eighty years afterwards. It must be the English empire, then; but the nation was not then polite enough to have introduced into the language of the law, or common parlance, any such phrase or idea. Rome never introduced the terms Roman empire until the tragedy of her freedom was com-

pleted. Before that, it was only the republic or the city. In the same manner, the realm, or the kingdom, or the dominions of the king, were the fashionable style in the age of the first charter. As to being subject to the supreme authority of the state, the prince who granted that charter thought it resided in himself, without any such troublesome tumults as lords and commons; and before the granting that charter, had dissolved his parliament, and determined never to call another, but to govern without. It is not very likely, then, that he intended our ancestors should be governed by parliament, or bound by its laws. As to being subject to its protection, we may guess what ideas king and parliament had of that, by the protection they actually afforded to our ancestors. Not one farthing was ever voted or given by the king or his parliament, or any one resolution taken about them. As to holding their lands, surely they did not hold their lands of lords and commons. If they agreed to hold their lands of the king, this did not subject them to English lords and commons, any more than the inhabitants of Scotland, holding their lands of the same king, subjected them. But there is not a word about the empire, the supreme authority of the state, being bound by its laws, or obliged for its protection in that whole charter. But "our charter is in the royal style." What then? Is that the parliamentary style? The style is this: "Charles, by the grace of God, King of England, Scotland, France, and Ireland, Defender of the Faith," &c. Now, in which capacity did he grant that charter; as King of France, or Ireland, or Scotland, or England? He governed England by one parliament, Scotland by another. Which parliament were we to be governed by? And Ireland by a third; and it might as well be reasoned, that America was to be governed by the Irish parliament, as by the English. But it was granted "under the great seal of England." True; but this seal runneth not out of the realm, except to mandatory writs, and when our charter was given, it was never intended to go out of the realm. The charter and the corporation were intended to abide and remain within the realm, and be like other corporations there. But this affair of the seal is a mere piece of imposition.

In Moore's Reports, in the case of the union of the realm of Scotland with England, it is resolved by the judges, that "the seal is alterable by the king at his pleasure, and he might make

one seal for both kingdoms (of England and Scotland); for seals, coin, and leagues, are of absolute prerogative to the king without parliament, not restrained to any assent of the people;" and in determining how far the great seal doth command out of England, they made this distinction: "That the great seal was current for remedials, which groweth on complaint of the subject, and thereupon writs are addressed under the great seal of England; which writs are limited, their precinct to be within the places of the jurisdiction of the court that was to give the redress of the wrong. And therefore writs are not to go into Ireland, or the Isles, nor Wales, nor the counties palatine, because the king's courts here have not power to hold pleas of lands or things there. But the great seal hath a power preceptory to the person, which power extendeth to any place where the person may be found," &c. This authority plainly shows, that the great seal of England has no more authority out of the realm, except to mandatory or preceptory writs, (and surely the first charter was no preceptory writ,) than the privy seal, or the great seal of Scotland, or no seal at all. In truth, the seal and charter were intended to remain within the realm, and be of force to a corporation there; but the moment it was transferred to New England, it lost all its legal force, by the common law of England; and as this translation of it was acquiesced in by all parties, it might well be considered as good evidence of a contract between the parties, and in no other light; but not a whit the better or stronger for being under the great seal of England. But "the grants are made by the king, for his heirs and successors." What then? So the Scots held their lands of him who was then king of England, his heirs and successors, and were bound to allegiance to him, his heirs and successors; but it did not follow from thence that the Scots were subject to the English parliament. So the inhabitants of Aquitain, for ten descents, held their lands, and were tied by allegiance to him who was king of England, his heirs and successors, but were under no subjection to English lords and commons.

Heirs and successors of the king are supposed to be the same persons, and are used as synonymous words in the English law. There is no positive artificial provision made by our laws, or the British constitution, for revolutions. All our positive laws suppose that the royal office will descend to the eldest branch of the male line, or, in default of that, to the eldest female, &c., forever,

and that the succession will not be broken. It is true that nature, necessity, and the great principles of self-preservation, have often overruled the succession. But this was done without any positive instruction of law. Therefore, the grants being by the king, for his heirs and successors, and the tenures being of the king, his heirs and successors, and the reservation being to the king, his heirs and successors, are so far from proving that we were to be part of an empire, as one state, subject to the supreme authority of the English or British state, and subject to its protection, that they do not so much as prove that we are annexed to the English crown. And all the subtilty of the writers on the side of the ministry, has never yet proved that America is so much as annexed to the crown, much less to the realm. "It is apparent the king acted in his royal capacity, as king of England." This I deny. The laws of England gave him no authority to grant any territory out of the realm. Besides, there is no color for his thinking that he acted in that capacity, but his using the great seal of England; but if the king is absolute in the affair of the seal, and may make or use any seal that he pleases, his using that seal which had been commonly used in England is no certain proof that he acted as king of England; for it is plain he might have used the English seal in the government of Scotland, and in that case it will not be pretended that he would have acted in his royal capacity as king of England. But his acting as king of England "necessarily supposes the territory granted to be a part of the English dominions, and holden of the crown of England." Here is the word "dominions" systematically introduced instead of the word "realm." There was no English dominions but the realm. And I say, that America was not any part of the English realm or dominions. And therefore, when the king granted it, he could not act as king of England, by the laws of England. As to the "territory being holden of the crown, there is no such thing in nature or art." Lands are holden according to the original notices of feuds, of the natural person of the lord. Holding lands, in feudal language, means no more than the relation between lord and tenant. The reciprocal duties of these are all personal. Homage, fealty, &c., and all other services, are personal to the lord; protection, &c. is personal to the tenant. And therefore no homage, fealty, or other services, can ever be rendered to the body politic, the political capacity, which is not

corporated, but only a frame in the mind, an idea. No lands here, or in England, are held of the crown, meaning by it the political capacity; they are all held of the royal person, the natural person of the king. Holding lands, &c. of the crown, is an impropriety of expression; but it is often used; and when it is, it can have no other sensible meaning than this, that we hold lands of that person, whoever he is, who wears the crown; the law supposes he will be a right, natural heir of the present king forever.

Massachusettensis then produces a quotation from the first charter, to prove several points. It is needless to repeat the whole; but the parts chiefly relied on are italicized. It makes the company a body politic in fact and name, &c., and enables it "to sue and be sued." Then the writer asks, "whether this looks like a distinct state or independent empire?" I answer, no. And that it is plain and uncontroverted, that the first charter was intended only to erect a corporation within the realm; and the governor and company were to reside within the realm; and their general courts were to be held there. Their agents, deputies, and servants only were to come to America. And if this had taken place, nobody ever doubted but they would have been subject to parliament. But this intention was not regarded on either side; and the company came over to America, and brought their charter with them. And as soon as they arrived here, they got out of the English realm, dominions, state, empire, call it by what name you will, and out of the legal jurisdiction of parliament. The king might, by his writ or proclamation, have commanded them to return; but he did not.

NOTE TO THE EDITION OF 1819.

Hostilities at Lexington, between Great Britain and her colonies, commenced on the nineteenth of April, two days succeeding the publication of this last essay. Several others were written, and sent to the printers of the Boston Gazette, which were probably lost amidst the confusion occasioned by that event.

WORKS

ON

GOVERNMENT.

PREFACE

BY THE EDITOR.

In times of social revolution, two descriptions of human power are forced into extraordinary activity. One of these is particularly directed to the work of demolition of the old, the other to that of reconstruction of the new, forms of government. Most frequently these are not found existing in one and the same set of persons; and the first class of agents, after having accomplished its work, yields its place to the second, which, in turn, performs that for which it is peculiarly fitted. "L'esprit d'organisation," says a modern French writer,[1] "le goût d'une régulière discipline, le don du commandement raisonnable, ne sont pas des qualités propres à ceux qui ont jeté le trouble dans la société. D'ailleurs, aux rares génies qui reçoivent cette mission, on ne donne pas le pouvoir, ils le prennent."

The share which Mr. Adams had in breaking up the system of colonial dependence has been already shown in the preceding division of this work. It is intended in this to present, in one clear and connected view, the system upon which he acted in reorganizing society upon the basis under which the country has thus far prospered. It will be perceived that, from first to last, from the year 1775, before the Declaration of Independence, down to the year 1793, when the present constitution had become fully established, the principles upon which he acted and counselled remain substantially the same. What these really were; how far they were adopted and incorporated into the institutions of the separate and of the United States; and how far they may be entitled to be hereafter received as sound, the

[1] *Questions Constitutionelles*, par M. de Barante.

present corrected form of publication will probably furnish the materials of deciding. Upon them, the reputation of the author with posterity must ultimately rest, far more than upon his active career. The system, though developed to serve an immediate purpose, is based upon a close examination of human nature, in every phase of its republican experience. Its suggestions and its warnings remain alike on record, their soundness to be tested by the future course of government, now tending more and more, in all civilized countries, to the adoption of popular forms.

The writings of Mr. Adams upon Government may be classed according to the three periods in which they were written.

The first embraces the exposition of his theory, prior to the attempt in any state to form an independent system, and is called the PLAN.

The second contains the proposal of a distinct form, when he was himself called upon to take a share in the organization of a government, and is called the MODEL.

The third includes the defence of the plan and model against all the objections that were raised against them, at a time when circumstances threatened to bring them into disrepute, and is, therefore, denominated the DEFENCE.

THE PLAN.

WORKS ON GOVERNMENT.

THE rapidity with which events in 1775 were hastening a final separation between Great Britain and the Colonies, naturally suggested in many minds reflections upon the position in which the people of the latter might be placed after removing the foundation of all recognized authority. Mr. Adams, in his Autobiography, speaks of the discussions held upon government during that season, among the members of the Continental Congress. The following letter seems to have been an effort to embody the ideas then uppermost in the writer's mind, made at the request of Richard Henry Lee, of Virginia, to whom it was addressed.

The copy from which this is printed was taken from the original, a few years since, by John Quincy Adams. Other copies were, however, circulated in Virginia at a much earlier date, one of which, with a few variations, was transmitted to England, and found its way to Government. It was discovered by Mr. Sparks, in the State Paper Office, and was printed by him in the Appendix to the second volume of Washington's Writings. As the earliest trace of the author's plan of government, it seems proper to be inserted here.

TO RICHARD HENRY LEE.

Philadelphia, 15 November, 1775.

DEAR SIR,— The course of events naturally turns the thoughts of gentlemen to the subjects of legislation and jurisprudence; and it is a curious problem, what form of government is most readily and easily adopted by a colony upon a sudden emergency. Nature and experience have already pointed out the solution of this problem, in the choice of conventions and committees of safety. Nothing is wanting, in addition to these, to make a complete government, but the appointment of magistrates for the due administration of justice.

Taking nature and experience for my guide, I have made the following sketch, which may be varied in any one particular an infinite number of ways, so as to accommodate it to the differ-

ent genius, temper, principles, and even prejudices, of different people.

A legislative, an executive, and a judicial power comprehend the whole of what is meant and understood by government. It is by balancing each of these powers against the other two, that the efforts in human nature towards tyranny can alone be checked and restrained, and any degree of freedom preserved in the constitution.

Let a full and free representation of the people be chosen for a house of commons.

Let the house choose, by ballot, twelve, sixteen, twenty-four, or twenty-eight persons, either members of the house, or from the people at large, as the electors please, for a council.

Let the house and council, by joint ballot, choose a governor, annually, triennially, or septennially, as you will.

Let the governor, council, and house, be each a distinct and independent branch of the legislature, and have a negative on all laws.

Let the governor, secretary, treasurer, commissary, attorney-general, and solicitor-general, be chosen annually, by joint ballot of both houses.

Let the governor, with seven counsellors, be a quorum.

Let all officers and magistrates, civil and military, be nominated and appointed by the governor, by and with the advice and consent of his council.

Let no officer be appointed but at a general council; and let notice be given to all the counsellors seven days, at least, before a general council.

Let the judges, at least of the supreme court, be incapacitated by law from holding any share in the legislative or executive power; let their commissions be during good behavior, and their salaries ascertained and established by law.

Let the governor have the command of the army, the militia, forts, &c.

Let the Colony have a seal, and affix it to all commissions.

In this way, a single month is sufficient, without the least convulsion, or even animosity, to accomplish a total revolution in the government of a colony. If it is thought more beneficial, a law may be made, by their new legislature, leaving to the

people at large the privilege of choosing their governor and counsellors annually, as soon as affairs get into a more quiet course.

In adopting a plan in some respects similar to this, human nature would appear in its proper glory, asserting its own real dignity, pulling down tyrannies at a single exertion, and erecting such new fabrics as it thinks best calculated to promote its happiness.

As you were last evening polite enough to ask me for this model, if such a trifle will be of any service to you, or any gratification of curiosity, here you have it from, Sir,

Your friend and humble servant,

JOHN ADAMS.

THOUGHTS

ON

GOVERNMENT:

APPLICABLE TO

THE PRESENT STATE

OF THE

AMERICAN COLONIES.

In a LETTER from a GENTLEMAN

To his FRIEND.

PHILADELPHIA:
PRINTED BY JOHN DUNLAP.
MDCCLXXVI.

PREFACE.

"In the winter of 1776 there was much discussion in Congress concerning the necessity of independence, and advising the several States to institute governments for themselves under the immediate authority and original power of the people. Great difficulties occurred to many gentlemen in making a transition from the old governments to new, that is, from the royal to republican governments. In January, 1776, Mr. George Wythe, of Virginia, passing an evening with me, asked me what plan I would advise a colony to pursue, in order to get out of the old government and into a new one. I sketched in words a scheme, which he requested me to give him in writing. Accordingly, the next day, I delivered to him the following letter. He lent it to his colleague, Richard Henry Lee, who asked me to let him print it; to which I consented, provided he would suppress my name; for if that should appear, it would excite a continental clamor among the tories, that I was erecting a battering-ram to demolish the royal government and render independence indispensable

"Quincy, 21 July, 1811."

The copy of the pamphlet to which this notice was prefixed in writing on the fly-leaf, is now separated from it, and neither that nor any other has been discovered among the papers. Judge Cranch, when preparing his Memoir of Mr. Adams for the Columbian Institute at Washington, was unable to find it in print.

The first edition, making a duodecimo of twenty-eight pages, was printed in Philadelphia, by John Dunlap, and copies are yet preserved in that city. The Editor has seen not less than three in the City Library, an institution rich in the early pamphlets of the Revolution. It is not probable that many ever found their way to Massachusetts. Certainly, none are known to exist there at the present time. A reprint was made of it the same year, by John Gill, in Queen Street, Boston, a copy of which is now in the Library of the American Antiquarian Society, at Worcester. It makes sixteen pages, 12mo, of paper and print far inferior to the original edition. Since that period it has been repeatedly printed; upon one occasion it was attributed to Mr. Jefferson, but most frequently it has appeared in connection with notices of the life of the author.

THOUGHTS ON GOVERNMENT.

My dear Sir, — If I was equal to the task of forming a plan for the government of a colony, I should be flattered with your request, and very happy to comply with it; because, as the divine science of politics is the science of social happiness, and the blessings of society depend entirely on the constitutions of government, which are generally institutions that last for many generations, there can be no employment more agreeable to a benevolent mind than a research after the best.

Pope flattered tyrants too much when he said,

> "For forms of government let fools contest,
> That which is best administered is best."

Nothing can be more fallacious than this. But poets read history to collect flowers, not fruits; they attend to fanciful images, not the effects of social institutions. Nothing is more certain, from the history of nations and nature of man, than that some forms of government are better fitted for being well administered than others.

We ought to consider what is the end of government, before we determine which is the best form. Upon this point all speculative politicians will agree, that the happiness of society is the end of government, as all divines and moral philosophers will agree that the happiness of the individual is the end of man. From this principle it will follow, that the form of government which communicates ease, comfort, security, or, in one word, happiness, to the greatest number of persons, and in the greatest degree, is the best.

All sober inquirers after truth, ancient and modern, pagan and Christian, have declared that the happiness of man, as well as his dignity, consists in virtue. Confucius, Zoroaster, Socrates, Mahomet, not to mention authorities really sacred, have agreed in this.

If there is a form of government, then, whose principle and foundation is virtue, will not every sober man acknowledge it better calculated to promote the general happiness than any other form?

Fear is the foundation of most governments; but it is so sordid and brutal a passion, and renders men in whose breasts it predominates so stupid and miserable, that Americans will not be likely to approve of any political institution which is founded on it.

Honor is truly sacred, but holds a lower rank in the scale of moral excellence than virtue. Indeed, the former is but a part of the latter, and consequently has not equal pretensions to support a frame of government productive of human happiness.

The foundation of every government is some principle or passion in the minds of the people. The noblest principles and most generous affections in our nature, then, have the fairest chance to support the noblest and most generous models of government.

A man must be indifferent to the sneers of modern Englishmen, to mention in their company the names of Sidney, Harrington, Locke, Milton, Nedham, Neville, Burnet, and Hoadly. No small fortitude is necessary to confess that one has read them. The wretched condition of this country, however, for ten or fifteen years past, has frequently reminded me of their principles and reasonings. They will convince any candid mind, that there is no good government but what is republican. That the only valuable part of the British constitution is so; because the very definition of a republic is "an empire of laws, and not of men." That, as a republic is the best of governments, so that particular arrangement of the powers of society, or, in other words, that form of government which is best contrived to secure an impartial and exact execution of the laws, is the best of republics.

Of republics there is an inexhaustible variety, because the possible combinations of the powers of society are capable of innumerable variations.

As good government is an empire of laws, how shall your laws be made? In a large society, inhabiting an extensive country, it is impossible that the whole should assemble to make laws. The first necessary step, then, is to depute power from the many to a few of the most wise and good. But by what

rules shall you choose your representatives? Agree upon the number and qualifications of persons who shall have the benefit of choosing, or annex this privilege to the inhabitants of a certain extent of ground.

The principal difficulty lies, and the greatest care should be employed, in constituting this representative assembly. It should be in miniature an exact portrait of the people at large. It should think, feel, reason, and act like them. That it may be the interest of this assembly to do strict justice at all times, it should be an equal representation, or, in other words, equal interests among the people should have equal interests in it. Great care should be taken to effect this, and to prevent unfair, partial, and corrupt elections. Such regulations, however, may be better made in times of greater tranquillity than the present; and they will spring up themselves naturally, when all the powers of government come to be in the hands of the people's friends. At present, it will be safest to proceed in all established modes, to which the people have been familiarized by habit.

A representation of the people in one assembly being obtained, a question arises, whether all the powers of government, legislative, executive, and judicial, shall be left in this body? I think a people cannot be long free, nor ever happy, whose government is in one assembly. My reasons for this opinion are as follow: —

1. A single assembly is liable to all the vices, follies, and frailties of an individual; subject to fits of humor, starts of passion, flights of enthusiasm, partialities, or prejudice, and consequently productive of hasty results and absurd judgments. And all these errors ought to be corrected and defects supplied by some controlling power.

2. A single assembly is apt to be avaricious, and in time will not scruple to exempt itself from burdens, which it will lay, without compunction, on its constituents.

3. A single assembly is apt to grow ambitious, and after a time will not hesitate to vote itself perpetual. This was one fault of the Long Parliament; but more remarkably of Holland, whose assembly first voted themselves from annual to septennial, then for life, and after a course of years, that all vacancies happening by death or otherwise, should be filled by themselves, without any application to constituents at all.

4. A representative assembly, although extremely well qualified, and absolutely necessary, as a branch of the legislative, is unfit to exercise the executive power, for want of two essential properties, secrecy and despatch.

5. A representative assembly is still less qualified for the judicial power, because it is too numerous, too slow, and too little skilled in the laws.

6. Because a single assembly, possessed of all the powers of government, would make arbitrary laws for their own interest, execute all laws arbitrarily for their own interest, and adjudge all controversies in their own favor.

But shall the whole power of legislation rest in one assembly? Most of the foregoing reasons apply equally to prove that the legislative power ought to be more complex; to which we may add, that if the legislative power is wholly in one assembly, and the executive in another, or in a single person, these two powers will oppose and encroach upon each other, until the contest shall end in war, and the whole power, legislative and executive, be usurped by the strongest.

The judicial power, in such case, could not mediate, or hold the balance between the two contending powers, because the legislative would undermine it. And this shows the necessity, too, of giving the executive power a negative upon the legislative, otherwise this will be continually encroaching upon that.

To avoid these dangers, let a distinct assembly be constituted, as a mediator between the two extreme branches of the legislature, that which represents the people, and that which is vested with the executive power.

Let the representative assembly then elect by ballot, from among themselves or their constituents, or both, a distinct assembly, which, for the sake of perspicuity, we will call a council. It may consist of any number you please, say twenty or thirty, and should have a free and independent exercise of its judgment, and consequently a negative voice in the legislature.

These two bodies, thus constituted, and made integral parts of the legislature, let them unite, and by joint ballot choose a governor, who, after being stripped of most of those badges of domination, called prerogatives, should have a free and independent exercise of his judgment, and be made also an integral part of the legislature. This, I know, is liable to objections; and, if

you please, you may make him only president of the council, as in Connecticut. But as the governor is to be invested with the executive power, with consent of council, I think he ought to have a negative upon the legislative. If he is annually elective, as he ought to be, he will always have so much reverence and affection for the people, their representatives and counsellors, that, although you give him an independent exercise of his judgment, he will seldom use it in opposition to the two houses, except in cases the public utility of which would be conspicuous; and some such cases would happen.

In the present exigency of American affairs, when, by an act of Parliament, we are put out of the royal protection, and consequently discharged from our allegiance, and it has become necessary to assume government for our immediate security, the governor, lieutenant-governor, secretary, treasurer, commissary, attorney-general, should be chosen by joint ballot of both houses. And these and all other elections, especially of representatives and counsellors, should be annual, there not being in the whole circle of the sciences a maxim more infallible than this, "where annual elections end, there slavery begins."

These great men, in this respect, should be, once a year,

> "Like bubbles on the sea of matter borne,
> They rise, they break, and to that sea return."

This will teach them the great political virtues of humility, patience, and moderation, without which every man in power becomes a ravenous beast of prey.

This mode of constituting the great offices of state will answer very well for the present; but if by experiment it should be found inconvenient, the legislature may, at its leisure, devise other methods of creating them, by elections of the people at large, as in Connecticut, or it may enlarge the term for which they shall be chosen to seven years, or three years, or for life, or make any other alterations which the society shall find productive of its ease, its safety, its freedom, or, in one word, its happiness.

A rotation of all offices, as well as of representatives and counsellors, has many advocates, and is contended for with many plausible arguments. It would be attended, no doubt, with many advantages; and if the society has a sufficient number of

suitable characters to supply the great number of vacancies which would be made by such a rotation, I can see no objection to it. These persons may be allowed to serve for three years, and then be excluded three years, or for any longer or shorter term.

Any seven or nine of the legislative council may be made a quorum, for doing business as a privy council, to advise the governor in the exercise of the executive branch of power, and in all acts of state.

The governor should have the command of the militia and of all your armies. The power of pardons should be with the governor and council.

Judges, justices, and all other officers, civil and military, should be nominated and appointed by the governor, with the advice and consent of council, unless you choose to have a government more popular; if you do, all officers, civil and military, may be chosen by joint ballot of both houses; or, in order to preserve the independence and importance of each house, by ballot of one house, concurred in by the other. Sheriffs should be chosen by the freeholders of counties; so should registers of deeds and clerks of counties.

All officers should have commissions, under the hand of the governor and seal of the colony.

The dignity and stability of government in all its branches, the morals of the people, and every blessing of society depend so much upon an upright and skilful administration of justice, that the judicial power ought to be distinct from both the legislative and executive, and independent upon both, that so it may be a check upon both, as both should be checks upon that. The judges, therefore, should be always men of learning and experience in the laws, of exemplary morals, great patience, calmness, coolness, and attention. Their minds should not be distracted with jarring interests; they should not be dependent upon any man, or body of men. To these ends, they should hold estates for life in their offices; or, in other words, their commissions should be during good behavior, and their salaries ascertained and established by law. For misbehavior, the grand inquest of the colony, the house of representatives, should impeach them before the governor and council, where they should have time and opportunity to make their defence; but, if convicted, should

be removed from their offices, and subjected to such other punishment as shall be thought proper.

A militia law, requiring all men, or with very few exceptions besides cases of conscience, to be provided with arms and ammunition, to be trained at certain seasons; and requiring counties, towns, or other small districts, to be provided with public stocks of ammunition and intrenching utensils, and with some settled plans for transporting provisions after the militia, when marched to defend their country against sudden invasions; and requiring certain districts to be provided with field-pieces, companies of matrosses, and perhaps some regiments of light-horse, is always a wise institution, and, in the present circumstances of our country, indispensable.

Laws for the liberal education of youth, especially of the lower class of people, are so extremely wise and useful, that, to a humane and generous mind, no expense for this purpose would be thought extravagant.

The very mention of sumptuary laws will excite a smile. Whether our countrymen have wisdom and virtue enough to submit to them, I know not; but the happiness of the people might be greatly promoted by them, and a revenue saved sufficient to carry on this war forever. Frugality is a great revenue, besides curing us of vanities, levities, and fopperies, which are real antidotes to all great, manly, and warlike virtues.

But must not all commissions run in the name of a king? No. Why may they not as well run thus, "The colony of to A. B. greeting," and be tested by the governor?

Why may not writs, instead of running in the name of the king, run thus, "The colony of to the sheriff," &c., and be tested by the chief justice?

Why may not indictments conclude, "against the peace of the colony of and the dignity of the same?"

A constitution founded on these principles introduces knowledge among the people, and inspires them with a conscious dignity becoming freemen; a general emulation takes place, which causes good humor, sociability, good manners, and good morals to be general. That elevation of sentiment inspired by such a government, makes the common people brave and enterprising. That ambition which is inspired by it makes them sober, industrious, and frugal. You will find among them some elegance,

perhaps, but more solidity; a little pleasure, but a great deal of business; some politeness, but more civility. If you compare such a country with the regions of domination, whether monarchical or aristocratical, you will fancy yourself in Arcadia or Elysium.

If the colonies should assume governments separately, they should be left entirely to their own choice of the forms; and if a continental constitution should be formed, it should be a congress, containing a fair and adequate representation of the colonies, and its authority should sacredly be confined to these cases, namely, war, trade, disputes between colony and colony, the post-office, and the unappropriated lands of the crown, as they used to be called.

These colonies, under such forms of government, and in such a union, would be unconquerable by all the monarchies of Europe.

You and I, my dear friend, have been sent into life at a time when the greatest lawgivers of antiquity would have wished to live. How few of the human race have ever enjoyed an opportunity of making an election of government, more than of air, soil, or climate, for themselves or their children! When, before the present epocha, had three millions of people full power and a fair opportunity to form and establish the wisest and happiest government that human wisdom can contrive? I hope you will avail yourself and your country of that extensive learning and indefatigable industry which you possess, to assist her in the formation of the happiest governments and the best character of a great people. For myself, I must beg you to keep my name out of sight; for this feeble attempt, if it should be known to be mine, would oblige me to apply to myself those lines of the immortal John Milton, in one of his sonnets:—

> "I did but prompt the age to quit their clogs
> By the known rules of ancient liberty,
> When straight a barbarous noise environs me
> Of owls and cuckoos, asses, apes, and dogs."

Our Convention is now employed in the great Work of Forming a Constitution. My most esteem'd republican Form has many & powerfull Enemys. A silly Thing published in Phil.a by a Nativ of Virg.a has just made its Appearance here, strongly recommended 'tis said by one of our Delyates now with you, B— His Reasonings upon & Distinction between private & public Virtue are weak shallow evasive, & the whole Performance an Affront & Disgrace to this Country & by one Expression — I suspect his Whiggism. Our session will be very long. During which I cannot count upon one Coadjutor of Talents equal to the Task. Would to God you & Sy.r Sam Adams were here It shall be my incessant Study to to form our Portrait of Govern.t that a Kindred with New England may be discern'd in it. And if all of Excellencys cannot be preserved yet I hope to retain so much of the Likeness, that Posterity shall pronounce us descended from the same Stock. If hell think perfection is obtain'd if we have of.r approbation. I'm forced to conclude But first let me beg to be presented to my ever esteem'd S. Adams. Adieu my Dear Sir may God preserve you & give you every good Thing

S. Henry Jr.

NOTE.

Copies of "Thoughts on Government" were sent by the author to many gentlemen with whom he had been in relations personal or political, and, among others, to Patrick Henry, of Virginia. The reply of Mr. Henry is on many accounts remarkable. It throws great light not only upon his own system at the commencement of the struggle, but upon the prevailing opinions of the time in the State to which he belonged.

TO JOHN ADAMS.

Williamsburgh, 20 May, 1776.

My Dear Sir, — Your favor, with the pamphlet, came safe to hand. I am exceedingly obliged to you for it; and I am not without hopes it may produce good here, where there is among most of our opulent families a strong bias to aristocracy. I tell my friends you are the author. Upon that supposition, I have two reasons for liking the book. The sentiments are precisely the same I have long since taken up, and they come recommended by you. Go on, my dear friend, to assail the strongholds of tyranny; and in whatever form oppression may be found, may those talents and that firmness, which have achieved so much for America, be pointed against it.

Before this reaches you, the resolution for finally separating from Britain will be handed to Congress by Colonel Nelson.[1] I put up with it in the present form for the sake of unanimity. 'Tis not quite so pointed as I could wish.

Excuse me for telling you of what I think of immense importance; 'tis to anticipate the enemy at the French Court. The half of our Continent offered to France, may induce her to aid our destruction, which she certainly has the power to accomplish. I know the free trade with all the States would be more beneficial to her than any territorial possessions she might acquire. But pressed, allured, as she will be — but, above all, ignorant of the great thing we mean to offer, may we not lose her? The consequence is dreadful.

Excuse me again. The confederacy; — that must precede an open declaration of independency and foreign alliances. Would it not be sufficient to confine it, for the present, to the objects of offensive and defensive nature, and a guaranty of the respective colonial rights? If a minute arrangement of things is attempted, such as equal representation, &c., &c., you may split and divide; certainly will delay the French alliance, which with me is every thing. The great force in San Domingo, Martinique, &c., is under the guidance of some person in high office. Will not the Mississippi lead your ambassadors thither most safely?

Our Convention is now employed in the great work of forming a constitution. My most esteemed republican form has many and powerful enemies. A silly thing, published in Philadelphia, by a native of Virginia, has just made its

[1] This resolution was passed on the 15th. *Force's American Archives*, fourth series, vol. vi. c. 1524.

appearance here, strongly recommended, 'tis said, by one of our delegates now with you, — Braxton. His reasonings upon and distinction between private and public virtue, are weak, shallow, evasive, and the whole performance an affront and disgrace to this country; and, by one expression, I suspect his whiggism.[1]

Our session will be very long, during which I cannot count upon one coadjutor of talents equal to the task. Would to God you and your Sam Adams were here! It shall be my incessant study, so to form our portrait of government, that a kindred with New England may be discerned in it; and if all your excellencies cannot be preserved, yet I hope to retain so much of the likeness, that posterity shall pronounce us descended from the same stock. I shall think perfection is obtained, if we have your approbation. I am forced to conclude; but first, let me beg to be presented to my ever-esteemed S. Adams. Adieu, my dear sir; may God preserve you, and give you every good thing.

P. Henry, Jr.

P.S. — Will you and S. A. now and then write?

[1] This refers to a small pamphlet published by Dunlap, at Philadelphia, and evidently designed as an answer to "Thoughts on Government." Its title is "An Address to the Convention of the Colony and Ancient Dominion of Virginia, on the subject of Government in general, and recommending a particular Form to their Consideration, by a Native of that Colony." The name of the writer has not been ascertained. Much interest attached to the proceedings of Virginia in framing a constitution, and an apprehension lest the popular features of the form recommended by Mr. Adams should find favor, seems to have led to this effort to counteract it. The address was reprinted in the Virginia Gazette, at Williamsburgh, on the eighth of June, 1776, being the time fixed for the consideration of the declaration of rights by the Convention. The form recommended is in direct conflict with the first principles laid down in "Thoughts on Government." A governor, during good behavior, elected by a house of representatives, renewed but once in three years; a council of twenty-four persons to serve for life, also chosen by the house; and a judiciary and military appointed by the governor, — constitute its main features. It is reprinted in the Great Collection made under the authority of Congress by Mr. Force, fourth series, vol. vi. cc. 748 – 754.

On the other hand, the tendency in Pennsylvania was to consider Mr. Adams's theory as not popular enough. In the Collection alluded to, is to be found a paper entitled, "The Interest of America," the purport of which is to recommend a single legislative branch, in which most of the powers are to be vested; a suggestion which was acted upon, as is well known, in the first constitution of Pennsylvania.

In the month of January, 1776, the delegates of North Carolina were authorized by the colonial legislature, to apply to Mr. Adams for his views of the nature of the government it would be proper to form, in case of a final dissolution of the authority of the Crown. The following letter, addressed to Mr. John Penn, one of the number, was the reply. In many parts it is in the very words of the preceding pamphlet, whilst in others it so essentially amplifies the views, as to render its insertion necessary to the full comprehension of the system of the author.

No copy of this letter was retained by Mr. Adams. It was not printed until 1814, when Mr. John Taylor, of Caroline County, Virginia, to whom it had come from the hands of Mr. Penn, inserted it in his work, entitled "An Inquiry into the Principles and Policy of the Government of the United States," from whence it is now taken.

TO JOHN PENN.

If I was possessed of abilities equal to the great task you have imposed upon me, which is to sketch out the outlines of a constitution for a colony, I should think myself the happiest of men in complying with your desire. Because, as politics is the art of securing human happiness, and the prosperity of societies depends upon the constitution of government under which they live, there cannot be a more agreeable employment to a benevolent mind than the study of the best kinds of government.

It has been the will of Heaven that we should be thrown into existence at a period when the greatest philosophers and lawgivers of antiquity would have wished to live. A period when a coincidence of circumstances without example, has afforded to thirteen Colonies, at once, an opportunity of beginning government anew from the foundation, and building as they choose. How few of the human race have ever had any opportunity of choosing a system of government for themselves and their children! How few have ever had any thing more of choice in government than in climate! These Colonies have now their election; and it is much to be wished that it may not prove to be like a prize in the hands of a man who has no heart to improve it.

In order to determine which is the best form of government, it is necessary to determine what is the end of government.

And I suppose, that in this enlightened age, there will be no dispute, in speculation, that the happiness of the people, the great end of man, is the end of government; and, therefore, that form of government which will produce the greatest quantity of happiness is the best.

All sober inquirers after truth, ancient and modern, divines, moralists, and philosophers, have agreed that the happiness of mankind, as well as the real dignity of human nature, consists in virtue; if there is a form of government whose principle and foundation is virtue, will not every wise man acknowledge it more likely to promote the general happiness than any other?

Fear, which is said, by Montesquieu and other political writers, to be the foundation of some governments, is so sordid and brutal a passion, that it cannot possibly be called a principle, and will hardly be thought in America a proper basis of government.

Honor is a principle which ought to be sacred; but the Grecians and Romans, pagan as well as Christian, will inform us that honor, at most, is but a part of virtue, and therefore a feeble basis of government.

A man must be indifferent to sneer and ridicule, in some companies, to mention the names of Sidney, Harrington, Locke, Milton, Nedham, Neville, Burnet, Hoadly; for the lines of John Milton, in one of his sonnets, will bear an application, even in this country, upon some occasions: —

> "I did but prompt the age to quit their clogs
> By the known rules of ancient liberty,
> When straight a barbarous noise environs me,
> Of owls and cuckoos, asses, apes, and dogs."

These great writers, however, will convince any man who has the fortitude to read them, that all good government is republican; that the only valuable part of the British constitution is so; for the true idea of a republic is an empire of laws, and not of men; and, therefore, as a republic is the best of governments, so that particular combination of power which is best contrived for a faithful execution of the laws, is the best of republics.

There is a great variety of republics, because the arrangements of the forms of society are capable of many variations.

As a good government is an empire of laws, the first question is, how shall the laws be made?

In a community consisting of large numbers, inhabiting an extensive country, it is not possible that the whole should assemble to make laws. The most natural substitute for an assembly of the whole, is a delegation of power from the many to a few of the most wise and virtuous. In the first place, then, establish rules for the choice of representatives; agree upon the number of persons who shall have the privilege of choosing one. As the representative assembly should be an exact portrait, in miniature, of the people at large, as it should think, feel, reason, and act like them, great care should be taken in the formation of it, to prevent unfair, partial, and corrupt elections. That it may be the interest of this assembly to do equal right and strict justice, upon all occasions, it should be an equal representation of their constituents; or, in other words, equal interests among the people should have equal interests in the representative body.

That the representatives may often mix with their constituents, and frequently render them an account of their stewardship, elections ought to be frequent:—

> "Like bubbles on the sea of matter borne,
> They rise, they break, and to that sea return."

These elections may be septennial or triennial; but, for my own part, I think they ought to be annual; *for there is not in all science a maxim more infallible than this, where annual elections end, there slavery begins.*

But all necessary regulations for the method of constituting this assembly may be better made in times of more quiet than the present, and they will suggest themselves naturally, *when the powers of government shall be in the hands of the people's friends.* For the present, it will be safest to go on in the usual way.

But we have as yet advanced only one step in the formation of a government. Having obtained a representative assembly, what is to be done next? Shall we leave all the powers of government to this assembly? Shall they make, and execute, and interpret laws too? I answer, No; a people cannot be long free, and never can be happy, whose laws are made, executed, and interpreted by one assembly. My reasons for this opinion are these:—

A single assembly is liable to all the vices, follies, and frailties of an individual; subject to fits of humor, transports of passion, partialities of prejudice; and, from these and other causes, apt to make hasty results and absurd judgments; all which errors ought to be corrected, and inconveniences guarded against, by some controlling power.

A single assembly is apt to grow avaricious, and in time would not scruple to exempt itself from burdens, which it would lay upon its constituents without sympathy.

A single assembly will become ambitious, and after some time will vote itself perpetual. This was found in the case of the Long Parliament; but more remarkably in the case of Holland, whose assembly first voted that they should hold their seats for seven years, then for life, and after some time, that they would fill up vacancies as they should happen, without applying to their constituents at all.

The executive power cannot be well managed by a representative assembly for want of two essential qualities, secrecy and despatch.

Such an assembly is still less qualified to exercise the judicial power; because it is too numerous, too slow, and generally too little skilled in the laws.

But shall the whole legislative power be left in the hands of such an assembly? The three first, at least, of the foregoing reasons will show that the legislative power ought not to be wholly entrusted to one assembly.

Let the representative body, then, elect from among themselves, or their constituents, or both, a distinct assembly, which we will call a council. It may consist of any number you please, say, twenty or thirty. To this assembly should be given a free and independent exercise of its judgment upon all acts of legislation, that it may be able to check and arrest the errors of the other.

But there ought to be a third branch of the legislature; and wherever the executive power of the state is placed, there the third branch of the legislature ought to be found.

Let the two houses, then, by joint ballot, choose a governor. *Let him be chosen annually. Divest him of most of those badges of slavery called prerogatives*, and give him a negative upon the legislature. This, I know, is liable to some objections, to obvi-

ate which, you may make him in a legislative capacity only president of the council. But if he is annually elective, you need not scruple to give him a free and independent exercise of his judgment; for he will have so great an affection for the people, the representatives and council, that he would seldom exercise this right, except in cases the public utility of which would soon be manifest, and some such cases would happen.

In the present exigency of American affairs, when, by an Act of Parliament, we are put out of the royal protection, and consequently discharged from all obligations of allegiance; and when it has become necessary to assume governments for immediate security, the governor, lieutenant-governor, secretary, treasurer, and attorney-general, should be chosen by joint ballot of both houses.

The governor, by and with, and not without, the advice and consent of council, should appoint all judges, justices, and all other officers, civil and military, who should have commissions signed by the governor, and under the seal of the colony.

Sheriffs should be chosen by the freeholders of the counties. If you choose to have a government more popular, all officers may be chosen by one house of assembly, subject to the negative of the other.

The stability of government, in all its branches, the morals of the people, and every other blessing of society and social institutions, depend so much upon an able and impartial administration of justice, *that the judicial power* should be separated from the legislative and executive, and independent upon both; the judges should be men of experience in the laws, of exemplary morals, invincible patience, unruffled calmness, and indefatigable application; their minds should not be distracted with complicated, jarring interests; they should not be dependent on any man or body of men; they should lean to none, be subservient to none, nor more complaisant to one than another. To this end, they should hold estates for life in their offices; or, in other words, their commissions should be during good behavior, and their salaries ascertained and established by law.

If accused of misbehavior by the representative body before the governor and council, and if found guilty after having an opportunity to make their defence, they should be removed from their offices, and subjected to such other punishment as their offences deserve.

A rotation of offices in the legislative and executive departments has many advocates, and, if practicable, might have many good effects. A law may be made, that no man shall be governor, lieutenant-governor, secretary, treasurer, counsellor, or representative, more than three years at a time, nor be again eligible until after an interval of three years.

A constitution like this, of which the foregoing is a very imperfect plan, naturally introduces general knowledge into the community, and inspires the people with a conscious dignity becoming freemen. A general desire of reputation and importance among their neighbors, which cannot be obtained without some government of their passions, some good humor, good manners, and good morals, takes place in the minds of men, and naturally causes general virtue and civility. That pride which is introduced by such a government among the people, makes them brave and enterprising. That ambition which is introduced into every rank, makes them sober, industrious, and frugal. You will find among them some elegance, but more solidity; a little politeness, but a great deal of civility; some pleasure, but more business.

Let commissions run thus: "Colony of North Carolina to A. B. greeting," &c., and be tested by the governor.

Let writs run: "The Colony of, &c., to the sheriff," &c.

Let indictments conclude: "against the peace of the Colony of North Carolina, and the dignity of the same;" or if you please: "against the peace of the Thirteen United Colonies."

We have heard much of a continental constitution; I see no occasion for any but a congress. Let that be made an equal and fair representative of the Colonies; and let its authority be confined to three cases, — war, trade, and controversies between colony and colony. If a confederation was formed, agreed on in Congress, and ratified by the assemblies, these Colonies, *under such forms of government and such a confederation, would be unconquerable by all the monarchies of Europe.*

This plan of a government for a colony, you see, is intended as a temporary expedient under the present pressure of affairs. The government once formed, and having settled its authority, will have leisure enough to make any alterations that time and experience may dictate. Particularly, a plan may be devised perhaps, and be thought expedient, *for giving the choice of the gov-*

ernor to the people at large, and of the counsellors to the freeholders of the counties. But, be these things as they may, two things are indispensably to be adhered to, — one is, some regulation for securing forever an equitable choice of representatives; another is, the education of youth, both in literature and morals.

I wish, my dear sir, that I had time to think of these things more at leisure, and to write more correctly; but you must take these hints, rough as they run. Your own reflections, *assisted by the patriots of North Carolina*, will improve upon every part of them.

As you brought upon yourself the trouble of reading these crude thoughts, you can't blame your friend,[1]

JOHN ADAMS.

[1] A letter of the same description was addressed to Jonathan Dickinson Sergeant, of New Jersey, in answer to a similar application, made at the time of the formation of the constitution in that State; but no copy has been found.

THE MODEL.

OBSERVATIONS

ON THE RECONSTRUCTION OF GOVERNMENT IN MASSACHUSETTS DURING THE REVOLUTION.

So early as the month of May, 1775, the difficulties attending the peculiar attitude of the patriotic party in Massachusetts had become sufficiently serious to elicit a letter from the Provincial Convention, the only centre of authority acknowledged at the time by the great body of the people, to the Continental Congress, requesting "most explicit advice respecting the taking up and exercising the powers of civil government," and, curiously enough, declaring a readiness to "*submit* to such a general plan as the congress might direct for the colonies."

An answer was not given to this modest, and even humble application, until it had been urgently repeated; and when at last it came, it was by no means so explicit as was requested, evidently partaking of the distracted counsels of the time. It evaded the true question of the source of power, by a resort to a fiction of law, much like that formerly used by the Long Parliament against Charles I. It assumed the charter granted by the King of Great Britain to be yet binding upon the people; whilst it charged upon the Governor, who was only his agent, acting under his appointment and pursuing his instructions, such a violation of it as forfeited all claim to their obedience. Until such a governor "should consent to govern the colony according to its charter," it recommended a resort to the usual forms of election for a representative body, and in lieu of that officer, the substitution, by election of the convention, of a provisional council clothed with executive authority.

In this transition state, the advice thus given seems to have been deemed decisive; accordingly a new house, under the forms of the charter, was called; and a council was soon afterwards chosen, which proceeded to reorganize the courts, and "in the absence of the governor and lieutenant-governor," to grant commissions. Some particulars respecting this period have been already given in a former volume,[1] together with a copy of the invitation of the council to Mr. Adams, to occupy the chief place in the new judicial organization which it undertook to establish. But it was not long before the obstacles to this arrangement proved its utter inefficacy. Many of the people, oppressed by debts, were not slow in availing themselves of the objection, that the civil process still ran in the king's name, although the king's authority had been thrown off; and they went, in some places, to the length of obstructing by force the meeting of the inferior courts. A jealousy of all those denominated executive officers became so general, that they were marked for exclusion in the new elections to the representative body. Last of all, a contention arose between the council and the

[1] Vol. iii. pp. 12, 24.

house, respecting the right to make military appointments, which threatened, at one moment, the most serious consequences to the weaker body. All these things served to show the slippery nature of the foundation upon which the community was standing, and from which nothing could have prevented a fall, but the immediate presence of the enemy, and the engrossing nature of the first duty of self-defence. On the fifteenth of May, 1776, the last support was taken from the charter, by the adoption in the continental congress, of the celebrated resolution and preamble, declaring it to be necessary, for reasons therein stated, "that the exercise of every kind of authority under the crown should be *suppressed*," and "all the powers of government exerted under the authority of the people of the colonies." In colonies like Pennsylvania and New York, less advanced in the struggle, this measure was construed as a dissolution of all existing forms of government, and as creating an immediate necessity for reorganization. In Massachusetts, the intermediate steps taken, though only temporary in their nature, seem to have been sufficient to dispel immediate anxiety for the consequences. Hence, it was not until September, 1776, that a proposition was adopted in the assembly, to appoint a committee, to prepare a form of government. A reasonable doubt of the extent of their powers restrained their going further without a reference to the people for authority to proceed. This course was finally agreed upon, but not until May of the next year, 1777. The people responded favorably; and, in pursuance of their instructions, the next legislative assembly devoted a considerable part of the year to the effort to make a constitution.

It is to be regretted, that, owing in some degree to the disturbed condition of things, the record of this proceeding was almost entirely neglected. The journals of the house and council furnish no light, probably for the reason that it was a matter not strictly within the province of either body, and one wherein both were fused into a single assembly having the attributes of neither. Hence, we can only gather the fact, that on the fourth of March, 1778, the form of instrument agreed upon was submitted to the people, by a resolution providing that the assent of two thirds of the voters should be required to give it validity.

This form failed to pass the ordeal of the popular judgment, so far as an opinion could be gathered from the very partial returns made of the votes. But a hundred and twenty towns neglected to express any opinion at all; and but twelve thousand persons, out of the whole state, went to the polls to answer in any way. Five sixths of them, however, voted in the negative, under the lead of a unanimous sentiment in Boston, the influence of which was at that time at its height. At this late period, it is difficult fully to comprehend the reasons of this decided condemnation. The rejected constitution of 1778 was certainly a very imperfect instrument, largely partaking of the haste and confusion of the time in which it was made; but, on the other hand, it was very much better than none at all, or than the temporary system which necessity had created. There was no bill of rights or definition of powers. The executive, legislative, and judicial departments were singularly commingled, and threatened some degree of confusion in the practical working of the machine; yet, notwithstanding these defects in the draught, it was at least a remedy for immediate evils, and the labor bestowed upon it can scarcely be said to have been wasted; for it contains the germ of some of the valuable fruits secured in the subsequent constitution.

Strange though it may seem, yet there is little reason to doubt that interests had already grown up, in this period of interregnum, adverse to the establishment of any more permanent government. So uncertain had the legislative body become of the sense of the majority on this point, that on the nineteenth of February of the next year, 1779, it adopted a resolution, proposing, that a vote of the people should be taken on two questions as a test of the will of the commonwealth. These two questions were, — first, whether the people would choose, at this time, to have any new form of government at all. Secondly, whether in case they did, they would empower their representatives to summon an assembly for the sole purpose of preparing such a form. To these propositions, nearly a third of the towns neglected to give any answer. Of the remainder, a majority of the voters responded in the affirmative. In obedience to this decision, a call of a convention was immediately issued; and elections were accordingly held, of delegates, to assemble on the first of September following, exclusively to form a constitution.

The share of Mr. Adams in this labor must now be explained. Prior to this time, he had confined himself to an expression of preference of the constitution of 1778, as a temporary measure, however imperfect, over the hazardous state of things under the provisional government. His first mission to Europe intervened, from which he only got back home on the second of August. The election of a delegate from his native town to the convention, took place seven days later, and he was the person chosen. He attended the opening of that body at Cambridge, on the first day of September, and remained in attendance until the eleventh of November, when he embarked upon his second mission to Europe. It is during this period, that his services in preparing the frame of government which was reported to the convention, and with some modifications finally adopted, were rendered. The precise nature of them, so far as they can now be distinguished, will be defined.

On Friday morning, the third of September, the convention, by a vote of 250 to 1, resolved, that it would prepare a declaration of rights of the people of the Massachusetts Bay. After some debate, it went a step further, and resolved, that it would "proceed to the framing a new constitution of government;" and it concluded the action of the day with the two following propositions: —

"Resolved, unanimously, That the government to be framed by this convention shall be a FREE REPUBLIC.

"Resolved, That it is of the essence of a free republic, that the people be governed by FIXED LAWS OF THEIR OWN MAKING."

The next day, a committee was chosen, consisting of thirty persons, to prepare a declaration of rights and the form of a constitution, out of whom the Hon. James Bowdoin, Samuel and John Adams, and John Lowell, were selected on behalf of the county of Suffolk, including the town of Boston. Monday, the sixth, was spent in what was called a free conversation upon the subjects that had been referred, and then it was voted to adjourn until the twenty-eighth of October, for the purpose of giving the committee time to prepare a report. Immediately upon the adjournment, the committee met in Boston, and, after extended discussion, delegated to a sub-committee of three members, the duty of preparing a draught of a constitution. The three were Mr. Bowdoin, Mr. Samuel Adams, and John Adams. By this sub-committee the task was committed to

John Adams, who performed it. To them the draught was first submitted, and they accepted it, with one or two trifling erasures. It was then reported to the grand committee, who made some alterations. The preparation of a declaration of rights was intrusted by the general committee to Mr. Adams alone. It was reported by him, with the exception of the third article, upon which he could not satisfy his own judgment.[1]

At the present moment, it is impossible to define the precise extent of the modifications made of Mr. Adams's draught, in the report as finally presented to the convention. So little attention was paid to the preservation of any of the papers, that not only the first draught is not to be found in the archives of the State, but even a copy of the report, as printed for the use of the members, was not there, when the committee, appointed by the legislature of 1832, to superintend the publication of the Journal of the Convention, undertook the task. Neither did they succeed in obtaining one from elsewhere, however necessary to the usefulness of their undertaking, until the body of their work had gone to press. It is sufficient for the present purpose, however, to know that, in its leading features, and in most of its language, the plan of Mr. Adams is preserved in the report. Even the most marked changes, which in later life, his recollection imputed to the action of the committee, now appear, by the report, not to have been made by them, but by the convention itself.

Considering all these circumstances, as well as the entire coincidence of the leading features of the system with the views of his whole life, it is fair to infer, that the paper was so far the product of his mind, as to merit a place in these volumes of his works.

That this was the idea which Mr. Adams himself had at the time is certain. For, in a letter dated 7 June, 1780, that is, immediately after the constitution had been ratified by the people, and addressed to Mr. Edmund Jenings, he sums up the matter thus: "I was chosen by my native town into the convention two or three days after my arrival. I was, by the convention, put upon the committee; by the committee, upon the sub-committee; so that I had the honor to be principal engineer. The committee made some alterations, as, I am informed, the convention have made a few others, in the report; but the frame and essence and substance is preserved."

Of the care and attention devoted to perfecting the constitution, he says, in another letter: "There never was an example of such precautions as are taken by this wise and jealous people in the formation of their government. None was ever made so perfectly upon the principle of the people's rights and equality. It is Locke, Sidney, and Rousseau and De Mably reduced to practice, in the first instance. I wish every step of their progress printed and preserved." Yet, if reliance can be placed upon a statement made by Dr. Gordon in the newspapers, he was not of those who held that absolute perfection could ever be reached; or that what had been done in one age might not be susceptible of improvement, by adaptation to the altered condition of things, in another.[2]

[1] These facts are taken from a letter of J. A. to W. D. Williamson, dated 25 February, 1812.

[2] "I have heard, that the Hon. John Adams, Esquire, delivered an excellent speech, soon after the meeting of the convention, the purport of which was to show, that it was impossible for human wisdom to form a plan of government

In considering this paper, the circumstances under which it was prepared should not be overlooked. Until the adoption of the federal constitution, the states were generally regarded as sovereignties, associated in a league for certain purposes not materially impairing their independent character. In these it was supposed that ambition would find its principal field. A form of government for one of these commonwealths was to be matured, with all the care and all the precautions against well-known dangers, that could be required in the greatest and most complicated case of an independent society. The subsequent transfer to the national government of all the great attributes of sovereignty, which occasion those dangers and difficulties, has materially affected the importance of the state constitutions. With the removal of the great objects of human ambition to another sphere, it is not more difficult to form a good practical system of government for a State than for a village or a family. This must account for the easy working of all the forms which have since been adopted by the respective States of the Union, however opposite in their character, and whatever may be the soundness of the objections that can be raised against some parts of them. The agitations of the system rarely shake it deeply, because they are deadened by the stronger power brought to bear from without. Hence, the careful limitations of the executive, the legislative, and the judicial power, to be found in the constitution of Massachusetts, are to be examined as parts of a separate system, standing or falling upon its own merits, rather than as subsidiary instruments of a greater machine, in which the interests and passions of men find their ultimate point of concentration. For the purposes of science, Massachusetts must, in this case, be regarded as the type of all independent, civilized communities, to which it is designed to present a model of government adapted to secure the great ends of human society.

In the following pages the effort is made, not simply to give such a model, as is supposed to have been mainly shaped by Mr. Adams, but also to trace the changes which it underwent after it left his hands. It will appear that modifications, which deserve the name of improvements, were adopted under the influence of the great practical and professional abilities freely applied to the subject in the deliberations of the convention. Moreover, the changes that have been made, in the course of seventy years that the system has been in operation, are all noted, in such a manner as to furnish a connected view of the progress of opinion under a popular form of government during that period. Upon such data as these can alone be formed any just inferences as to the perpetuity of free institutions. The subject is one which has not yet been dealt with in a truly philosophical sense in America, though it opens a wider field of analytical investigation than any other presented by its history.

In examining this part of the work it will be necessary to keep in mind, that the text is that of the Report made by the committee of the convention, and prepared for them by Mr. Adams. The passages inclosed within brackets are those

that should suit all future emergencies, and that, therefore, periodical revisions were requisite."

See the *Address to the Freemen of Massachusetts*, by William Gordon, in the Independent Chronicle, 4 May, 1780. The same speech was referred to by Mr. Dawes, in the Convention of 1820, who said he heard it. *Journal of Debates and Proceedings*, p. 194.

which were entirely erased by the convention. Those marked by Italic letters are such as underwent changes; the exact substitutes are supplied in notes to the respective places. Wherever a blank occurs, the note will indicate the words inserted in the form as finally adopted. The amendments engrafted by the later convention of 1820, as well as subsequently, under the authority created by that assembly, are appended to those sections and articles which they respectively affect.

THE

REPORT OF A CONSTITUTION,

OR

FORM OF GOVERNMENT,

FOR THE

COMMONWEALTH OF MASSACHUSETTS;

Agreed upon by the Committee,—to be laid before the Convention of Delegates, *assembled at* Cambridge, *on the first day of September*, 1779; *and continued by adjournment to the twenty-eighth day of October following.*

PREAMBLE.

The end of the institution, maintenance, and administration of government is to secure the existence of the body politic; to protect it, and to furnish the individuals who compose it with the power of enjoying, in safety and tranquillity, their natural rights and the blessings of life; and whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, happiness, and prosperity.

The body politic is formed by a voluntary association of individuals. It is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a Constitution

of Government, to provide for an equitable mode of making laws, as well as for an impartial interpretation and a faithful execution of them, that every man may, at all times, find his security in them.

We, therefore, [the delegates of] the people of Massachusetts, [in general convention assembled, for the express and sole purpose of framing a constitution, or form of government, to be laid before our constituents, according to their instructions,] acknowledging, with grateful hearts, the goodness of the great Legislator of the universe, in affording *to this people*,[1] in the course of His providence, an opportunity *of entering into an original, explicit, and solemn compact with each other, deliberately and peaceably, without fraud, violence, or surprise*;[2] and of forming a new constitution of civil government for *themselves*[3] and [their] posterity; and devoutly imploring His direction in *a design so interesting*[4] [to them and their posterity,] — do, [by virtue of the authority vested in us by our constituents,] agree upon [5] the following Declaration of Rights, and Frame of Government, as the CONSTITUTION OF THE COMMONWEALTH OF MASSACHUSETTS.

[CHAPTER I.][6]

A DECLARATION OF THE RIGHTS OF THE INHABITANTS OF THE COMMONWEALTH OF MASSACHUSETTS.

Art. I. All men are born [equally] free and *independent*,[7] and have certain natural, essential, and unalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting [their] property; in fine, that of seeking and obtaining their safety and happiness.

1 "us,"
2 The two clauses in Italics transposed.
3 "ourselves"
4 "so interesting a design,"
5 "ordain and establish"
6 PART THE FIRST.
7 "equal." The language of this article, as reported, is nearly the same with that of the first article of the Bill of Rights of Virginia.

II. It is the [1] duty of all men in society, publicly, and at stated seasons, to worship the SUPREME BEING, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping GOD in the manner [2] most agreeable to the dictates of his own conscience; or, for his religious profession or sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship.

III. [Good morals being necessary to the preservation of civil society; and the knowledge and belief of the being of GOD, His providential government of the world, and of a future state of rewards and punishment, being the only true foundation of morality, the legislature hath, therefore, a right, and ought to provide, at the expense of the subject, if necessary, a suitable support for the public worship of GOD, and of the teachers of religion and morals; and to enjoin upon all the subjects an attendance upon their instructions at stated times and seasons; provided there be any such teacher on whose ministry they can conscientiously and conveniently attend.] [3]

1 "right as well as the"

2 "and season"

3 This clause was not at all satisfactory to the convention. After several days spent in discussion, and the proposal of various amendments, the subject was recommitted to a committee of seven persons, with the Reverend Mr. Alden as the chairman, who reported this substitute, which was finally adopted, in an amended form, and after long debates: —

"III. As the happiness of a people, and the good order and preservation of a civil government, essentially depend upon piety, religion, and morality; and as these cannot be generally diffused through a community, but by the institution of the public worship of GOD, and of public instruction in piety, religion, and morality, — therefore, to promote their happiness, and to secure the good order and preservation of their government, the people of this commonwealth have a right to invest their legislature with power to authorize and require, and the legislature shall, from time to time, authorize and require the several towns, parishes, precincts, and other bodies politic or religious societies, to make suitable provision, at their own expense, for the institution of the public worship of God, and for the support and maintenance of public Protestant teachers of piety, religion, and morality, in all cases where such provision shall not be made voluntarily.

"And the people of this commonwealth have also a right to, and do, invest their legislature with authority to enjoin upon all the subjects, an attendance upon the instructions of the public teachers aforesaid, at stated times and seasons, if there be any on whose instructions they can conscientiously and conveniently attend.

"Provided, notwithstanding, that the several towns, parishes, precincts, and other bodies politic, or religious societies, shall, at all times, have the exclusive

All moneys paid by the subject to the support of public worship, and of the *instructors in religion and morals*,[1] shall, if he require it, be uniformly applied to the support of the [2] teacher or teachers of his own religious [3] denomination, *if there be such whose ministry he attends upon;*[4] otherwise it may be paid *to*[5] the teacher or teachers of the parish or precinct *where he usually resides.*[6] [7]

right of electing their public teachers, and of contracting with them for their support and maintenance."

[1] "public teachers aforesaid," [2] "public" [3] "sect or"

[4] "provided there be any on whose instruction he attends;"

[5] "towards the support of"

[6] "in which the said moneys are raised."

[7] A new clause was appended to this article by the convention, as follows:—

"And every denomination of Christians, demeaning themselves peaceably and as good subjects of the commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law."

It has already been remarked, that the third article, as it appears in the original report, was not made by Mr. Adams. In a letter written long afterwards, to Mr. Williamson, the historian of Maine, he gives, as a reason, "that he could not satisfy his own judgment with any article that he thought would be accepted; and, further, that some of the clergy, and graver persons than himself, would be more likely to hit the taste of the public."

The amended form of the article is said, in the address of the convention to the people, to have been "finally agreed upon, with much more unanimity than usually takes place in disquisitions of this nature." It was not, however, adopted without strong and vehement remonstrance, which was again manifested at the time of the popular ratification, and it never was quietly acquiesced in afterwards. Indeed, it may truly be said to be the only portion of the constitution which furnished a constant topic of dispute, until finally abandoned in 1833. The reason is obvious enough. Professing carefully to secure an equality among Christians of all denominations, it did yet, in practice, give a decided advantage to one sect over the rest. In this respect, a marked difference is perceptible between the original and the amended form of the article. The former broadly embraces men of all classes of religious belief, including the Catholic on one side, and the Deist on the other; and, doubtless, this was one of the most serious grounds of objection to it. For, even in the meagre journal that remains, it appears that, not content with the amended form, limiting the authority of the legislature to require provision to be made by the towns to the maintenance of public *Protestant* teachers, and confining the moneys to be raised to the support of such teachers, amendments were pressed, specifically excepting "Papists," and "Christians whose principles are repugnant to the constitution," or, "whose avowed principles are inconsistent with the peace and safety of society," from "the protection of the law." These amendments did not prevail, it is true; but the steadiness with which they were urged, is one among many indications here visible, how gradually the old puritan feeling was receding before the modern movement of religious equality.

The grievance to which this article gave rise was that, in addition to compulsory taxation, there were many cases in which the property of persons became liable to be used, against their will, for the benefit of forms of religious faith which they most disapproved; and latterly, by the construction of the courts, a limitation was made upon the power of selection, even among the

IV. The people of this commonwealth have the sole and exclusive right of governing themselves, as a free, sovereign, and independent state; and do, and forever hereafter shall, exercise

churches of the denomination to which the contributor himself belonged. This occasioned so great uneasiness, as at last to require from the legislature of 1811 the passage of a law, designed partially to remedy the evil. The call of a new convention to revise the constitution, made necessary by the separation of Maine in 1819, furnished an opportunity for the revival of the controversy. All the abilities of that somewhat remarkable assembly became enlisted upon one or the other side, until the dispute finally settled into the ordinary form of a question between the old and the new, between conservatism and reform.

Mr. Adams, although at the time infirm, by reason of his great age, he being eighty-five years old, was a member of this convention. Yet on this subject he showed more interest than upon any other. The tendency of his mind will appear most clearly from the following extracts taken from the Report of the Debates:—

"Mr. Parker, of Boston, rose, at the request of the gentleman from Quincy, who was unavoidably absent, to propose that, in the third article of the Declaration of Rights, the words, 'all men, of all religions, demeaning themselves as good subjects, shall enjoy the equal protection of the laws,' should be inserted instead of the words, 'men of every denomination of Christians.'

"Mr. Williams had no special objection to this proposition; but did not think it would meet the wishes of the people of this commonwealth.

"Mr. Parker withdrew the proposition."

Unable, from physical debility, to attend regularly, and still less to take an active part in the debates, Mr. Adams yet had this point so much at heart, that he made a new effort to get it before the body, at a later moment, as appears from the Journal.

"Mr. Boylston, of Princeton, at the suggestion of Mr. Adams, of Quincy, who was absent, offered a resolution proposing to alter the constitution, so that instead of 'every denomination of Christians,' &c. it should read, 'all men of all religions, demeaning themselves peaceably, and as good subjects of the commonwealth, shall be equally under the protection of the law.'

"Referred to the committee of the whole on the Declaration of Rights."

On the 28th the resolution was taken up, and the following discussion took place:—

"Mr. Boylston, of Princeton, said, that his object was entirely in a commercial relation. It was intended to invite foreigners to come to our shores, by the offer of equal protection to men of all religious opinions. As the constitution now stands, the offer of protection was confined to persons of the Christian religion.

"Mr. Hubbard read the second article of the Bill of Rights, which he thought made the most ample provision for the object.

"Mr. J. Davis, of Boston, opposed the resolution. He thought it would be better to leave it to legislative discretion. Persons of all religions have, in fact, full and equal protection.

"Mr. Quincy objected to the resolution, because it seemed to imply that persons of all religions were not now under the protection of the law. He showed on what ground he thought the object was fully provided for.

"The resolution was negatived."

It seems scarcely necessary, at this day, to show how entirely the reasoning of the objectors evaded the question at issue. In all probability the remark of Mr. Williams was correct, — that the popular sentiment was not then ready to carry out the abstract principle, of total separation between church and state, even though it underlies the whole theory of republican government. Yet the very

and enjoy every power, jurisdiction, and right, which *are*[1] not, or may not hereafter be by them expressly delegated to the United States of America, in congress assembled.

V. All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them.[2]

VI. No man, nor corporation or association of men, have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community, than what arises from the consideration of services rendered to the public; and this title, being in nature neither hereditary nor transmissible to children, or descendants, or relations by blood, the idea

same amendment had been proposed by Dr. Price, in his Observations, published thirty-six years before!

In the convention of 1820, the conservative section, constituted, as it was, of a large proportion of the ability, learning, and weight of character in the commonwealth, prevailed so far as to retain the feature of compulsory taxation for the support of religious worship. But the article which, after great labor and contention, had been shaped in a form to meet the assent of a majority of that assembly, was decisively rejected by the people, when submitted for ratification. The matter remained unsettled from that period until the year 1833, when, through the power of amendment vested by the revised constitution in the action of two successive legislative assemblies, the following article received the assent of the requisite numbers, and was approved by the popular vote. Although it has worked some inconvenient change in the structure of religious societies, it cannot thus far be said to have been attended with those serious evils to the habits of worship which were predicted as about to flow from it:—

"Art. 11. As the public worship of God, and instructions in piety, religion, and morality promote the happiness and prosperity of a people, and the security of a republican government,—therefore, the several religious societies of this commonwealth, whether corporate or unincorporate, at any meeting legally warned and holden for that purpose, shall ever have the right to elect their pastors or religious teachers; to contract with them for their support; to raise money for erecting and repairing houses for public worship, for the maintenance of religious instruction, and for the payment of necessary expenses. And all persons belonging to any religious society shall be taken and held to be members, until they shall file with the clerk of such society a written notice, declaring the dissolution of their membership, and thenceforth shall not be liable for any grant or contract which may be thereafter made or entered into by such society. And all religious sects and denominations, demeaning themselves peaceably, and as good citizens of the commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law."

[1] "is"

[2] This is an amplification of the second article of the Virginia Bill of Rights.

of a man born a magistrate, lawgiver, or judge, is absurd and unnatural.[1]

VII. Government is instituted for the common good; for the protection, safety, prosperity, and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men; therefore, the people alone have an incontestable, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity, and happiness require it.[2]

VIII. In order to prevent those who are vested with authority from becoming oppressors, the people have a right, at such periods and in such manner as *may be delineated in*[3] their frame of government, to cause their public officers to return to private life, and to fill up vacant places by certain and regular elections [4]

IX. All elections ought to be free; and all the [male] inhabitants of this commonwealth, having *sufficient qualifications*,[5] have an equal right to elect officers, and to be elected, for public employments.

X. Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty, and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection; and to give his personal service, or an equivalent, when necessary. But no part of the property of any individual can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. In fine, the people of this commonwealth are not controllable by any other laws than those to which their constitutional representative body have given their consent. [6]

1 The fourth article of the Virginia Bill amplified.
2 The third article of Virginia expanded.
3 "they shall establish by"
4 "and appointments."
5 "such qualifications as they shall establish by their frame of government,"
6 "And whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor."

XI. Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay, conformably to the laws.

XII. No subject shall be held to answer for any crime or offence, until the same is fully and plainly, substantially and formally described to him. *He cannot*[1] be compelled to accuse [himself,] or [to] furnish evidence against himself; and every subject shall have a right *to be fully heard in his defence, by himself or his counsel at his election; to meet the witnesses against him face to face; to produce all proofs that may be favorable to him;*[2] [to require a speedy and public trial by an impartial jury of the country, without whose unanimous consent, or his own voluntary confession, he cannot finally be declared guilty, or sentenced to loss of life, liberty, or property.][3]

XIII. In criminal prosecutions, the verification of facts in the vicinity where they happen, is one of the greatest securities of the life, liberty, and property of the citizen.

[XIV.][3] No subject [of the commonwealth] shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land.

XIV. [XV.] Every *man*[4] has a right to be secure from all unreasonable searches and seizures of his person, his houses, his papers, and all his possessions. All warrants, therefore, are con-

[1] "; or"

[2] The last three parts of this sentence were placed by the convention in an order exactly reversed.

[3] That which makes the fourteenth article in the report now follows, and is incorporated into the twelfth, with a single amendment, above noted.

The following addition, in lieu of the portion stricken out, completes the article as it appears in the constitution: —

"And the legislature shall not make any law, that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury."

[4] "subject"

trary to this right, if the cause or foundation of them be not previously supported by oath or affirmation, and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure; and no warrant ought to be issued but in cases and with the formalities prescribed by the laws.

XV. [XVI.] In all controversies concerning property, and in all suits between two or more persons, [1] the parties have a right to a trial by [a] jury; and this method of procedure shall be held sacred; unless in causes arising on the high seas, and such as relate to mariners' wages, the legislature shall hereafter find it necessary to alter it.

XVI. [XVII.] *The people have a right to the freedom of speaking, writing, and publishing their sentiments. The liberty of the press, therefore, ought not to be restrained.*[2]

XVII. [XVIII.] The people have a right to keep and to bear arms for the common defence. And as in time of peace [standing] armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature; and the military power shall always be held in an exact subordination to the civil authority, and be governed by it.

XVIII. [XIX.] A frequent recurrence to the fundamental principles of the constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry, and frugality, are absolutely necessary to preserve the advantages of liberty, and to maintain a free government. The people ought, consequently, to have a particular attention to all those principles, in the choice of their officers and representatives. And they have a

[1] "except in cases in which it has heretofore been otherways used and practised,"

[2] This article was recommitted by the convention, when the following substitute was reported and adopted. Much objection was made to it, among the people, as insufficient: —

"XVI. The liberty of the press is essential to the security of freedom in a state; it ought not, therefore, to be restrained in this commonwealth."

right to require of their lawgivers and magistrates an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of the commonwealth.

XIX. [XX.] The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good, give instructions to their representatives, and to request of the legislative body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and the grievances they suffer.

XX. [XXI.] The power of suspending the laws, or the execution of the laws, ought never to be exercised but by the legislature, or by authority derived from it, to be exercised in such particular cases only as the legislature shall expressly provide for; [and there shall be no suspension of any law for the private interest, advantage, or emolument, of any one man, or class of men.]

XXI. [XXII.] The freedom of deliberation, speech, and debate, in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action or complaint, in any other court or place whatsoever.

XXII. [XXIII.] The legislature ought frequently to assemble for the redress of grievances, for correcting, strengthening, and confirming the laws, and for making new laws as the common good may require.

XXIII. [XXIV.] No subsidy, charge, tax, impost, or duties ought to be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people, or their representatives in the legislature.

XXIV. [XXV.] Laws made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive, and inconsistent with the fundamental principles of a free government.

XXV. [XXVI.] No *man*[1] ought in any case, or in any time, to be declared guilty of treason or felony by [any act of] the legislature.

XXVI. [XXVII.] No magistrate or court of law shall demand excessive bail, or sureties, impose excessive fines, or inflict cruel or unusual punishments.

XXVII. [XXVIII.] In time of peace, no soldier ought to be quartered in any house without the consent of the owner; and in time of war, such quarters ought not to be made, but by the civil magistrate in a manner ordained by the legislature.

XXVIII. [XXIX.] No person can in any case be subjected to law martial, or to any penalties or pains by virtue of that law, except those employed in the army or navy, and except the militia in actual service, but by authority of the legislature.

XXIX. [XXX.] It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial, and independent as the lot of humanity will admit. It is, therefore, not only the best policy, but for the security of the rights of the people and of every citizen, that the judges[2] should hold their offices as long as they behave themselves well, and that they should have honorable salaries ascertained and established by standing laws.

[1] "subject"

[2] "of the supreme judicial court"

Extract from the Journal of the Convention.

"After long debate, it was moved and seconded, that the sense of the convention be taken upon the word 'judges,' in said article; in order to which a question was moved and seconded, namely, — 'whether it be the sense of this convention, that the judges of the supreme judicial court of this commonwealth, ought to be appointed to hold their office during good behavior;' which, being put, passed in the affirmative, by seventy-eight out of one hundred and thirteen, (ayes 78, noes 35.)

"It was then moved and seconded, that a question be put: whether it is the opinion of this convention, that the judges of the courts of common pleas, in this commonwealth, ought to be appointed to hold their offices during good behavior; which was accordingly put, and passed in the negative, by fifty-seven out of one hundred and nineteen, (ayes 57, noes 62.)"

This decision was reversed on a subsequent day, by sixty-two out of eighty-six, (ayes 62, nays 24.)

XXX. [XXXI.] *The judicial department of the state ought to be separate from, and independent of, the legislative and executive powers.*[1]

[CHAPTER II.[2]]

THE FRAME OF GOVERNMENT.

THE people inhabiting the territory *heretofore*[3] called the Province of Massachusetts Bay, do hereby solemnly and mutually agree with each other to form themselves into a free, sovereign, and independent body politic, or State, by the name of THE COMMONWEALTH OF MASSACHUSETTS.

In the government of the Commonwealth of Massachusetts, the legislative, executive, and judicial power shall be placed in separate departments, to the end that it might be a government of laws, and not of men.[1]

[4]

SECTION I.

[5]

ART. I. THE department of legislation shall be formed by two branches, A SENATE and HOUSE OF REPRESENTATIVES; each of which shall have a negative on the other.

They [2] shall assemble *once*,[7] on the last Wednesday in May, and at such other times as they shall judge necessary, [every year,] [8] and shall be styled THE GENERAL COURT OF MASSACHUSETTS.

[1] XXX. In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them, to the end it may be a government of laws and not of men.

[2] "PART THE SECOND." [3] "formerly"

Extract from the Journal.

"On a motion, made and seconded, that the word 'Massachusetts' be expunged, and that the word 'Oceana' be substituted, the same was put, and passed in the negative."

[4] "CHAPTER I. THE LEGISLATIVE POWER." [5] *The General Court.*

[6] "The legislative body" [7] "every year

[8] "and shall dissolve and be dissolved on the day next preceding the said last Wednesday in May,"

The convention of 1820 changed the beginning of the legislative year to

[And the first magistrate shall have a negative upon all the laws, that he may have power to preserve the independence of the executive and judicial departments.] [1]

January, as will be seen by the following, which is the tenth amendment adopted by the people: —

Amendment.

ART. 10. The political year shall begin on the first Wednesday of January, instead of the last Wednesday of May; and the general court shall assemble every year on the said first Wednesday of January, and shall proceed, at that session, to make all the elections, and do all the other acts, which are by the constitution required to be made and done at the session which has heretofore commenced on the last Wednesday of May. And the general court shall be dissolved on the day next preceding the first Wednesday of January, without any proclamation or other act of the governor. But nothing herein contained shall prevent the general court from assembling at such other times as they shall judge necessary, or when called together by the governor. The governor, lieutenant-governor, and counsellors, shall also hold their respective offices for one year next following the first Wednesday of January, and until others are chosen and qualified in their stead.

The meeting for the choice of governor, lieutenant-governor, senators, and representatives, shall be held on the second Monday of November in every year; but meetings may be adjourned, if necessary, for the choice of representatives, to the next day, and again to the next succeeding day, but no further. But in case a second meeting shall be necessary for the choice of representatives, such meetings shall be held on the fourth Monday of the same month of November.

All the other provisions of the constitution respecting the elections and proceedings of the members of the general court, or any other officers or persons whatever, that have reference to the last Wednesday of May as the commencement of the political year, shall be so far altered as to have like reference to the first Wednesday of January.

This article shall go into operation on the first day of October next following the day when the same shall be duly ratified and adopted as an amendment of the constitution; and the governor, lieutenant-governor, counsellors, senators, representatives, and all other state officers who are annually chosen, and who shall be chosen for the current year, when the same shall go into operation, shall hold their respective offices until the first Wednesday of January then next following, and until others are chosen and qualified in their stead, and no longer; and the first election of the governor, lieutenant-governor, senators, and representatives, to be had in virtue of this article, shall be had conformably thereunto, in the month of November following the day on which the same shall be in force and go into operation, pursuant to the foregoing provision.

[1] In lieu of this absolute negative, which, in the opinion of Mr. Adams, was an essential part of the plan, the convention adopted the following, as a separate article: —

II. No bill or resolve of the senate or house of representatives, shall become a law, and have force as such, until it shall have been laid before the governor for his revisal. And if he, upon such revision, approve thereof, he shall signify his approbation by signing the same. But if he have any objection to the passing of such bill or resolve, he shall return the same, together with his objections thereto, in writing, to the senate or house of representatives, in which soever the same shall have originated, who shall enter the objections sent down by the governor, at large on their records, and proceed to reconsider the said bill or resolve. But if, after such reconsideration, two thirds of the said senate or house of representatives shall, notwithstanding the said objections, agree to pass the

III. [II.] The general court shall forever have full power and authority to erect and constitute judicatories and courts of record, or other courts, to be held in the name of the commonwealth, for the hearing, trying, and determining of all manner of crimes, offences, pleas, processes, plaints, actions, matters, causes, and things, whatsoever, arising or happening within the commonwealth, or between or concerning persons inhabiting, or residing, or brought within the same; whether the same be criminal or civil, or whether the said crimes be capital or not capital, and

same, it shall, together with the objections, be sent to the other branch of the legislature, where it shall also be reconsidered, and, if approved by two thirds of the members present, shall have the force of a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the said bill or resolve, shall be entered upon the public records of the commonwealth.

And in order to prevent unnecessary delays, if any bill or resolve shall not be returned by the governor within five days after it shall have been presented, the same shall have the force of a law.

Extract from the Journal of the Convention.

"The paragraph from the report of the general committee, — namely, 'That the first magistrate shall have a negative upon all laws, that he may have power to preserve the independence of the executive and judicial departments,' — on a motion made and seconded, was then put, and passed in the negative; thirty-two in seventy-six. (Ayes 32, nays 44.)"

At a subsequent period, the subject came up again, on the report of a committee to whom the article had been referred, —

"When it was moved and seconded, that the report be amended by introducing the following words; namely, —

"'That the governor of this commonwealth have a negative upon all the laws, except those which shall be made and passed for the military defence of the State; and that he have a revision on those, to be conducted by the rules hereafter prescribed.'

"Which being largely debated, when the question was put, the same was determined in the negative; twenty in seventy-three."

The decline in importance of the State governments, by the subsequent withdrawal of the power over the most material of the public interests into the national sphere, has rendered this question one of inferior interest in Massachusetts. But it is yet agitated in the federal system, and bids fair to continue unsolved for some time to come. Although cheerfully acquiescing in the alteration at the time, the abstract opinion of Mr. Adams, of the absolute necessity of this power to the maintenance of the executive independence, remained unchanged to the last.

In order that the period of five days conceded to the governor for consideration should not be cut off by the delay of the legislature to pass a measure until just before its adjournment, the convention of 1820 proposed, and the people ratified, the following amendment, which now stands as part of the constitution: —

Art. I. If any bill or resolve shall be objected to, and not approved by the governor, and if the general court shall adjourn within five days after the same shall have been laid before the governor for his approbation, and thereby prevent his returning it, with his objections, as provided by the constitution, such bill or resolve shall not become a law, nor have force as such.

whether the said pleas be real, personal or mixt; and for the awarding and making out of execution thereupon. To which courts and judicatories are hereby given and granted full power and authority, from time to time, to administer oaths or affirmations, for the better discovery of truth in any matter in controversy, or depending before them.

IV. [III.] And further, full power and authority are hereby given and granted to the said general court, from time to time, to make, ordain, and establish all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions, and instructions, either with penalties or without; so as the same be not repugnant or contrary to this constitution, as they shall judge to be for the good and welfare of this commonwealth, and for the government and ordering thereof, and of the subjects of the same, and for the necessary support and defence of the government thereof; and to name and settle annually, or provide by fixed laws, for the naming and settling all civil officers within the said commonwealth, [such officers excepted] the election and constitution of whom are not hereafter in this Form of Government otherwise provided for; and to set forth the several duties, powers, and limits, of the several civil and military officers of this commonwealth, and the forms of such oaths [1] as shall be respectively administered unto them for the execution of their several offices and places, so as the same be not repugnant or contrary to this constitution; [and also to impose fines, mulcts, imprisonments, and other punishments;] and to impose and levy proportional and reasonable assessments, rates, and taxes, upon [the persons of] all the inhabitants of, and [2] within the said commonwealth, [and upon all estates within the same,] [3] to be issued and disposed of by warrant, under the hand of the governor of this commonwealth for the time being, with the advice and consent of the council, for the public service, in the necessary defence and support of the government of the said commonwealth, and the protection and preservation of the subjects thereof, according to such acts as are or shall be in force

1 "or affirmations" 2 "persons resident, and estates lying,"
3 "and also to impose and levy reasonable duties and excises upon any produce, goods, wares, merchandise, and commodities whatsoever, brought into, produced, manufactured, or being within the same;"

within the same [and to dispose of matters and things whereby they may be religiously, peaceably, and civilly governed, protected, and defended.]

And *that public*[1] assessments may be made with equality, there shall be a valuation of estates within the commonwealth taken anew once in every ten years at [the] least,[2] [3]

SECTION II.

Senate.

I. There shall be annually elected by the freeholders and other inhabitants of this commonwealth, qualified as in this constitution is provided, forty persons, to be counsellors and senators for the year ensuing their election, to be chosen [in and] by the inhabitants of the districts into which the commonwealth may from time to time be divided by the general court, for that purpose. And the general court, in assigning the numbers to be elected by the respective districts, shall govern themselves by the proportion of the public taxes paid by the said districts;[4] and

[1] "while the public charges of government, or any part thereof, shall be assessed on polls and estates, in the manner that has hitherto been practised, in order that such"

[2] "and as much oftener as the general court shall order."

[3] The convention of 1820 further enlarged the powers of the general court by the following article, which was ratified, and now stands as the second article of amendment: —

"Art. 2. The general court shall have full power and authority to erect and constitute municipal or city governments in any corporate town or towns in this commonwealth, and to grant to the inhabitants thereof such powers, privileges, and immunities, not repugnant to the constitution, as the general court shall deem necessary or expedient for the regulation and government thereof, and to prescribe the manner of calling and holding public meetings of the inhabitants, in wards or otherwise, for the election of officers under the constitution, and the manner of returning the votes given at such meetings. Provided, that no such government shall be erected or constituted in any town not containing twelve thousand inhabitants; nor unless it be with the consent and on the application of a majority of the inhabitants of such town, present and voting thereon, pursuant to a vote at a meeting duly warned and holden for that purpose. And provided also, that all by-laws made by such municipal or city government, shall be subject, at all times, to be annulled by the general court."

[4] By the latest or thirteenth article of amendment adopted under the new power in the legislature, granted in 1820, the basis of the senate has been changed as follows: —

"The several senatorial districts now existing shall be permanent. The senate shall consist of forty members; and, in the year one thousand eight hundred and forty, and every tenth year thereafter, the governor and council shall assign the number of senators to be chosen in each district, according to the number of inhabitants in the same. But, in all cases, at least one senator shall be assigned to each district."

timely make known to the inhabitants of the commonwealth, the limits of each district, and the number of counsellors and senators to be chosen therein; provided that the number of such districts shall *be never more than sixteen, nor less than ten.*[1]

And the several counties in this commonwealth shall, until the general court shall determine it necessary to alter said districts, be districts for the choice of counsellors and senators (except that the counties of Dukes County and Nantucket shall form one district for that purpose,) and shall elect the following number for counsellors and senators, namely, —

Suffolk . . .	6	[York, ...	2]
Essex, . . .	6	Dukes County and Nan-	
Middlesex, . . .	5	tucket, . . .	1
Hampshire, . .	4	Worcester, . . .	5
Plymouth, . . .	3	[Cumberland, . . .	1]
Barnstable, . . .	1	[Lincoln, . . .	1][2]
Bristol, . . .	3	Berkshire, . . .	2

II. The senate shall be the first branch of the legislature; and the senators shall be chosen in the following manner, namely, — There shall be a meeting on the first Monday in April, annually, forever, of the inhabitants of *all the towns*[3] in the several counties of this commonwealth, to be called by the selectmen, and warned in due course of law, at least seven days before the first Monday in April, for the purpose of electing persons to be senators and counsellors. And at such meetings every male *person*[4] of twenty-one years of age and upwards, *resident in such towns one year next preceding the annual election of senators, having a freehold estate within the commonwealth of the annual income of three pounds, or other real or personal estate of the value of sixty pounds, shall have a right to give in his vote for the senators for the district.*

The selectmen of the several towns shall preside at such meetings, and shall be under oath, as well as the town-clerk, to preside

[1] "never be less than thirteen; and that no district be so large as to entitle the same to choose more than six senators."

[2] This provision was made to include that portion of the territory which has since been separated, and now constitutes the state of Maine. The county of Hampshire has since been subdivided into three counties, and the number now apportioned on the basis of population has not been reduced.

[3] "each town"

[4] "inhabitant"

impartially, according to their best skill and judgment; and to make a just and true return.

The selectmen shall receive the votes of all the inhabitants of such towns,[1] qualified to vote for senators, and shall sort and count them in open town meeting, and in presence of the town-clerk, who shall make a fair record, in presence of the selectmen, and in open town meeting, of the name of every person voted for, and of the number of votes against his name; and a fair copy of this record shall be attested by the selectmen and the town-clerk, and shall be sealed up, directed to the secretary of the commonwealth, for the time being, with a superscription, expressing the purport of the contents thereof, and delivered by the town-clerk of such towns to the sheriff of the county in which such town lies, thirty days at least before the last Wednesday in May, annually; or it shall be delivered into the secretary's office seventeen days at least before the said last Wednesday in May; and the sheriff of each county shall deliver all such certificates by him received into the secretary's office, seventeen days before the said last Wednesday in May.

And the inhabitants of plantations unincorporated, qualified as this constitution provides, who are or shall be empowered and required to assess taxes upon themselves toward the support of government, shall have the same privilege of voting for counsellors and senators in the plantations where they reside, as town inhabitants have in their respective towns; and the plantation meetings for that purpose shall be held annually, on the same first Monday in April, at such place in the plantations respectively, as the assessors thereof shall direct; which assessors shall have like authority for notifying the electors, collecting and returning the votes, as the selectmen and town-clerks have in their several towns by this constitution. And all other persons

[1] "having a freehold estate within the commonwealth, of the annual income of three pounds, or any estate of the value of sixty pounds, shall have a right to give in his vote for the senators for the district of which he is an inhabitant. And, to remove all doubts concerning the meaning of the word 'inhabitant' in this constitution, every person shall be considered as an inhabitant, for the purpose of electing and being elected into any office or place within this state, in that town, district, or plantation, where he dwelleth or hath his home.

"The selectmen of the several towns shall preside at such meetings impartially; and shall receive the votes of all the inhabitants of such towns present, and"

The qualification of voters was altered by the convention of 1820, in the manner pointed out in the note to the fourth article of the third section. See p. 243.

living in places unincorporated (qualified as aforesaid) who shall be assessed to the support of government by the assessors of an adjacent town, shall have the privilege of giving in their votes for counsellors and senators, in the town where they shall be assessed, and be notified of the place of meeting by the selectmen of the town where they shall be assessed for that purpose accordingly.

III. And that there may be a due convention of senators on the last Wednesday in May, annually, the governor, with five of the council, for the time being, shall, as soon as may be, examine the returned copies of such records; and fourteen days before the said day he shall issue his summons to such persons as shall appear to be chosen by a majority of voters, to attend on that day, and take their seats accordingly; provided, nevertheless, that, for the first year, the said returned copies shall be examined by the president and five of the council of the former constitution of government; and the said president shall, in like manner, issue his summons to the persons so elected, that they may take their seats, as aforesaid.

IV. The senate [however] shall be the final judge of the elections, returns, and qualifications of their own members, [1] and shall, on the said last Wednesday in May, annually, determine and declare who are elected by each district to be senators, by a majority of votes. And, in case there shall not appear to be the full number of senators returned, elected by a majority of votes for any district, the deficiency shall be supplied in the following[2] manner, namely: — The members of the house of representatives, and such senators as shall be declared elected, shall take the names of *twice the number of senators wanting*, *from*

[1] "as pointed out in the constitution;"

[2] The mode of electing the senate was very much debated in the convention, and not decided upon without great difference of opinion. But it was acquiesced in, and has remained substantially unchanged to this day. Yet it may be justly objected to as defective in simplicity, and ill adapted to the equal representation as well of property as of public opinion in the commonwealth. The mode now generally pursued in the other states, of apportioning the members into separate districts, and doing away with the contingency of a vacancy, to be filled by a body other than the immediate constituents of the person elected, and often not in political sympathy with them, seems to recommend itself as more direct and consonant with the spirit of republican institutions.

those who shall be found to have the highest number of votes in such district, and not elected;[1] and out of these shall elect, by ballot, a number of senators sufficient to fill up the vacancies in such district. And in this manner all such vacancies shall be filled up in every district of the commonwealth; and in like manner all vacancies in the senate, arising by death, removal out of the state, or otherwise, shall be supplied as soon as may be after such vacancies shall happen.

V. Provided, nevertheless, that no person shall be capable of being elected as a senator, who is not [of the Christian religion, and][2] seised in his own right of a freehold within this commonwealth, of the value of three hundred pounds at least, [3] and who has not been an inhabitant of this commonwealth for the space of *seven*[4] years, [three of which] immediately preceding his election, and [5] in the district for which he shall be chosen.

VI. The senate shall have power to adjourn themselves, provided such adjournments do not exceed two days at a time.

VII. The senate shall choose its own president, appoint its own officers, and determine its own rules of proceeding[s].

VIII. The senate shall be a court, with full authority to hear and determine all impeachments made by the house of representatives, against any officer or officers of the commonwealth, for misconduct and maladministration in their offices. But previous to the trial of every impeachment, the members of the senate shall respectively be sworn, truly and impartially to try and determine the charge in question, according to evidence. Their judgment, however, shall not extend farther than to removal

1 "such persons as shall be found to have the highest number of votes in such district, and not elected, amounting to twice the number of senators wanting, if there be so many voted for;"

2 *Extract from the Journal.* "Moved and seconded, That the word 'Protestant' be inserted in lieu of the word 'Christian,' which, being put, passed in the negative.

"The question was then put upon the paragraph, so far as it takes up the qualification of religion. The same was rejected, and the words 'of the Christian religion and' voted to be expunged."

3 "or possessed of personal estate to the value of six hundred pounds at least, or of both to the amount of the same sum,"

4 "five" 5 "at the time of his election he shall be an inhabitant"

from office, and disqualification to hold or enjoy any place of honor, trust, or profit under this commonwealth. But the party so convicted shall be, nevertheless, liable to indictment, trial, judgment, and punishment, according to the laws of the land.

IX[1]

SECTION III.

House of Representatives.

I. There shall be in the legislature of this commonwealth a representation of the people annually elected, and founded *in*[2] equality.

II. And, in order to provide for a representation of the citizens of this commonwealth, founded upon the principle of equality, every corporate town, containing one hundred and fifty ratable polls, may elect one representative. Every corporate town, containing three hundred and seventy-five ratable polls, may elect two representatives. Every corporate town, containing six hundred ratable polls, may elect three representatives; and proceeding in that manner, making two hundred and twenty-five ratable polls the mean increasing number for every additional representative.

[And forever, hereafter, the least number of ratable polls necessary to entitle a corporate town to elect one representative, when increased by the addition of a number equal to half the said least number, shall be the mean increasing number of ratable polls for every additional representative any corporate town may elect.

And, to prevent hereafter the house of representatives from becoming unwieldy, and incapable of debating and deliberating, by the great additions it would continually receive from the increasing settlement and population of this commonwealth, no corporate town shall, from and after the year of our Lord, one thousand seven hundred and ninety, be entitled to elect one representative, unless it shall contain two hundred ratable polls; nor to elect two representatives, unless it shall contain five hun-

1 The following article was added by the convention: —
"IX. Not less than sixteen members of the senate shall constitute a quorum for doing business."

2 "upon the principle of"

dred ratable polls; nor to elect three representatives, unless it shall contain eight hundred ratable polls; and so proceeding in that manner, making, by the aforesaid rule, three hundred ratable polls the mean increasing number for every additional representative. And every tenth year, from and after the said year of our Lord, one thousand seven hundred and ninety, and until such time as the number of representatives which may be elected for this commonwealth shall not exceed the number of two hundred, the least number of ratable polls which, at that time, any corporate town must contain to entitle it to elect one representative, shall be increased by the addition of fifty; and the least number aforesaid, thus increased by the said addition, shall be the number of ratable polls any corporate town must contain to entitle it to elect one representative; and the number of representatives any corporate town may elect shall be regulated accordingly, by the rules aforesaid.

The freeholders and other inhabitants of this commonwealth, qualified to vote for representatives, living in corporate towns, which, severally, shall contain a less number of ratable polls than is necessary to entitle them, respectively, to elect one representative, shall, nevertheless, have a right to associate with some town or towns adjoining, for the election of representatives; and, in such cases, the voters thus united, shall have a right to elect the same number of representatives as they would have done were they inhabitants of one corporate town; which representatives may be elected out of either of the associated towns, indifferently. And the legislature shall, from time to time, determine what towns shall thus associate, the manner of the association, and the method and manner of calling and conducting the meetings of the associated towns for the election of representatives.][1]

[1] The subject of representation seems to have exercised the skill of the convention more than any other portion of the instrument, and it has remained a difficulty from the beginning to this time. The problem has been to unite with the popular and just principle of the representation of townships, a ratio of tolerable equality, and a limitation of numbers sufficient for practical legislation.

Instead of the passage inclosed within brackets, the convention of 1780 adopted the following proviso:—

"Provided, nevertheless, that each town now incorporated, not having one hundred and fifty ratable polls, may elect one representative; but no place shall hereafter be incorporated, with the privilege of electing a representative, unless there are within the same one hundred and fifty ratable polls.

"And the house of representatives shall have power, from time to time to im-

III. *The members*[1] of the house of representatives shall be chosen by written votes; [and no person shall be qualified or eligible to be a member of the said house, unless he be of the

pose fines upon such towns as shall neglect to choose and return members to the same, agreeably to this constitution.

"The expenses of travelling to the general assembly, and returning home, once in every session, and no more, shall be paid by the government out of the public treasury, to every member who shall attend, as seasonably as he can, in the judgment of the house, and does not depart without leave."

The check here imposed upon an excess of members, consisted in the necessity laid upon the respective towns to pay their own representatives. This answered very well in all but high party times, when the evil was sure to be felt. But dissatisfaction with it existed on other grounds. It was found so much more easy and convenient to draw the means of payment from the common treasury of the state, that most persons of influence favored the inclination of the towns to shift the burden. Yet the desire to make this change was counteracted by the difficulty of finding a good substitute. The convention of 1820 attempted the experiment, and recommended an article to the people, but it was rejected. The legislatures of 1835 and 1836 proposed another, which received their assent, and now makes the twelfth article of amendments: —

"Art. 12. In order to provide for a representation of the citizens of this commonwealth, founded upon the principles of equality, a census of the ratable polls in each city, town, and district of the commonwealth, on the first day of May, shall be taken, and returned into the secretary's office, in such manner as the legislature shall provide, within the month of May, in the year of our Lord, one thousand eight hundred and thirty-seven, and in every tenth year thereafter, in the month of May, in manner aforesaid; and each town or city, having three hundred ratable polls at the last preceding decennial census of polls, may elect one representative; and for every four hundred and fifty ratable polls, in addition to the first three hundred, one representative more.

"Any town having less than three hundred ratable polls shall be represented thus, — the whole number of ratable polls, at the last preceding decennial census of polls, shall be multiplied by ten, and the product divided by three hundred, and such town may elect one representative as many years within ten years as three hundred is contained in the product aforesaid.

"Any city or town having ratable polls enough to elect one or more representatives, with any number of polls beyond the necessary number, may be represented as to that surplus number, by multiplying such surplus number by ten, and dividing the product by four hundred and fifty; and such city or town may elect one additional representative as many years within ten years as four hundred and fifty is contained in the product aforesaid.

"Any two or more of the several towns and districts may, by consent of a majority of the legal voters, present at a legal meeting in each of said towns and districts, respectively, called for that purpose, and held previous to the first day of July, in the year in which the decennial census of polls shall be taken, form themselves into a representative district, to continue until the next decennial census of polls, for the election of a representative or representatives; and such district shall have all the rights, in regard to representation, which would belong to a town containing the same number of ratable polls.

"The governor and council shall ascertain and determine, within the months of July and August, in the year of our Lord, one thousand eight hundred and thirty-seven, according to the foregoing principles, the number of representatives

[1] "Every member"

Christian religion,] and, for one year at least, next preceding his election, shall have been an inhabitant of, and have been seised in his own right of a freehold of the value of one hundred

which each city, town, and representative district is entitled to elect, and the number of years within the period of ten years, then next ensuing, that each city, town, and representative district may elect an additional representative; and where any town has not a sufficient number of polls to elect a representative each year, then, how many years within the ten years such town may elect a representative; and the same shall be done once in ten years thereafter, by the governor and council, and the number of ratable polls in each decennial census of polls shall determine the number of representatives which each city, town, and representative district may elect, as aforesaid; and when the number of representatives, to be elected by each city, town, or representative district, is ascertained and determined, as aforesaid, the governor shall cause the same to be published forthwith for the information of the people, and that number shall remain fixed and unalterable for the period of ten years.

"All the provisions of the existing constitution, inconsistent with the provisions herein contained, are hereby wholly annulled."

This amendment had not been in operation a year, before it was discovered to be open to serious objections. Whilst it did not effectively remedy the serious evil of excess in the representation, the apportionment of it among the fractions created an extraordinary practical inequality. A new effort was made to remedy this, in connection with a radical change of the basis upon which the whole system originally rested, from polls or taxation, to population or numbers. This resulted, in 1840, in the modification of the basis of the senate, which has already been noticed under the proper head, and in the following article, which now constitutes the rule of representation in the lower house:—

"Art. 13. A census of the inhabitants of each city and town, on the first day of May, shall be taken, and returned into the secretary's office, on or before the last day of June of the year one thousand eight hundred and forty, and of every tenth year thereafter, which census shall determine the apportionment of senators and representatives for the term of ten years.

"The members of the house of representatives shall be apportioned in the following manner:—Every town or city, containing twelve hundred inhabitants, may elect one representative; and two thousand four hundred inhabitants shall be the mean increasing number which shall entitle it to an additional representative.

"Every town containing less than twelve hundred inhabitants, shall be entitled to elect a representative as many times within ten years, as the number one hundred and sixty is contained in the number of the inhabitants of said town. Such towns may also elect one representative for the year in which the valuation of estates within the commonwealth shall be settled.

"Any two or more of the several towns may, by consent of a majority of the legal voters, present at a legal meeting in each of said towns, respectively, called for that purpose, and held before the first day of August, in the year one thousand eight hundred and forty, and every tenth year thereafter, form themselves into a representative district, to continue for the term of ten years; and such district shall have all the rights, in regard to representation, which would belong to a town containing the same number of inhabitants.

"The number of inhabitants which shall entitle a town to elect one representative, and the mean increasing number, which shall entitle a town or city to elect more than one, and also the number by which the population of towns, not entitled to a representative every year, is to be divided, shall be increased respectively, by one tenth of the numbers above-mentioned, whenever

pounds, within the town [or towns] he shall be chosen to represent; [1] and he shall cease to represent the said town [or towns] immediately on his ceasing to be *a freeholder within the same.*[2]

IV. Every male person, being twenty-one years of age, and resident in any particular town in this commonwealth for the space of one year next preceding, having a freehold estate within the same town, of the annual income of three pounds, or *other* [3] estate [real or personal or mixt] of the value of sixty pounds, shall have a right to vote in the choice of a representative or representatives for the said town, [or for the towns united as aforesaid.] [4]

the population of the commonwealth shall have increased to seven hundred and seventy thousand; and for every additional increase of seventy thousand inhabitants, the same addition of one tenth shall be made respectively to the said numbers above mentioned.

"In the year of each decennial census, the governor and council shall, before the first day of September, apportion the number of representatives which each city, town, and representative district is entitled to elect, and ascertain how many years within ten years, any town may elect a representative, which is not entitled to elect one every year; and the governor shall cause the same to be published forthwith."

The practical effect of the last amendment is to give a great preponderance to the power of the large towns, whilst the right of representation of the small ones is liable to be cut off at moments when it might be most for their interest that they should enjoy it. These disadvantages are not balanced by the slight relative inequality in their favor of the ratio of representation. This is one of the instances that can be quoted in modern times, (the Reform Bill in Great Britain is another,) in which an apparent concession to the popular principle has shown a practical movement in an opposite direction. The change of the basis, from property to population, has really promoted the influence of property. It may reasonably be doubted, whether any change yet made from the article as it originally stood in the constitution has been an improvement, although some change was made indispensable by the progress of the population.

1 "or any ratable estate to the value of two hundred pounds;"

2 "qualified as aforesaid."

By the last or thirteenth amendment of the constitution, adopted in 1840, it is provided: "That no possession of a freehold, or of any other estate, shall be required as a qualification for holding a seat in either branch of the general court, or in the executive council."

3 "any"

4 The convention of 1820 proposed the following substitute for this article, which was adopted by the people, and now stands as the third article of amendments:—

"ART. 3. Every male citizen of twenty-one years of age, and upwards, (excepting paupers and persons under guardianship,) who shall have resided within the commonwealth one year, and within the town or district in which he may claim a right to vote, six calendar months next preceding any election of governor, lieutenant-governor, senators, or representatives, and who shall have paid, by himself or his parent, master, or guardian, any state or county tax, which shall, within two years next preceding such election, have been assessed

V. The members of the house of representatives shall be chosen annually in the month of May, ten days at least before the last Wednesday of that month, [from among the wisest, most prudent, and virtuous of the freeholders.]

VI. The house of representatives shall be the grand inquest of this commonwealth; and all impeachments made by them shall be heard and tried by the senate.

VII. All money-bills shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills.

VIII. The house of representatives shall have power to adjourn themselves; provided such adjournment shall not exceed two days at a time.

IX. Not less than sixty members of the house of representatives shall constitute a quorum for doing business.

X. The house of representatives shall [1] choose their own speaker, appoint their own officers, and settle the rules and orders of proceeding in their own house. They shall have authority to punish, by imprisonment, every person [2] who shall be guilty of disrespect to the house, in its presence, by any disorderly or contemptuous behavior; *or by threatening or ill-treating any of its members; or, in a word, by obstructing its deliberations; every person guilty of a breach of its privileges, in making arrests for debts, or by assaulting one of its members during his attendance at any session, or on the road, whether he be going to the house or returning home; in assaulting any one of its officers, or in disturbing him in the execution of any order or procedure of the house; in assaulting or troubling any witness or other person ordered to*

upon him in any town or district of this commonwealth, and also every citizen who shall be by law exempted from taxation, and who shall be in all other respects qualified as above-mentioned, shall have a right to vote in such election of governor, lieutenant-governor, senators, and representatives; and no other person shall be entitled to vote in such election."

[1] "be the judge of the returns, elections, and qualifications of its own members, as pointed out in the constitution; shall"

[2] "not a member"

attend the house, in his way in going or returning, or in rescuing any person arrested by order of the house.[1]

XI. The senate shall have the same powers in the like cases; and the governor and council shall have the same authority to punish in like cases. Provided, that no imprisonment on the warrant or order of the governor, council, senate, or house of representatives, for either of the above described offences, be for a term exceeding thirty days.[2]

CHAPTER II. [III.]

Executive Power.

SECTION I.

Governor.

ART. I. THERE shall be a supreme executive magistrate, who shall be styled, THE GOVERNOR OF THE COMMONWEALTH OF MASSACHUSETTS, and whose title shall be, HIS EXCELLENCY.

II. The governor shall be chosen annually; and no person shall be eligible to this office unless, at the time of his election, he shall have been an inhabitant of this commonwealth for seven years next preceding; and unless he shall at the same time be seised in his own right of a freehold within the commonwealth, of the value of one thousand pounds; and unless he shall[3] be of the Christian religion.

[1] "or who, in the town where the general court is sitting, and during the time of its sitting, shall threaten harm to the body or estate of any of its members, for any thing said or done in the house; or who shall assault any of them therefor; or who shall assault or arrest any witness or other person ordered to attend the house, in his way in going or returning; or who shall rescue any person arrested by the order of the house.

"And no member of the house of representatives shall be arrested, or held to bail on mean process, during his going unto, returning from, or his attending, the general assembly."

[2] Addition:—

"And the senate and house of representatives may try and determine all cases where their rights and privileges are concerned, and which, by the constitution, they have authority to try and determine, by committees of their own members, or in such other way as they may respectively think best."

[3] "declare himself to"

This declaration was annulled by the convention of 1820, in the seventh amendment which appears in the note to the fourth article. See page 263.

III. Those persons who shall be qualified to vote for senators and representatives within the several towns of this commonwealth, shall, at a meeting to be called for that purpose, on the first Monday of April annually, give in their votes for a governor, to the selectmen, who shall preside at such meetings; and the town clerk, in the presence and with the assistance of the selectmen, shall in open town meeting sort and count the votes, and form a list of the persons voted for, with the number of votes for each person against his name, and shall make a fair record of the same in the town books, and a public declaration thereof in the said meeting; and shall, in the presence of the inhabitants, seal up copies of the said list, attested by him and the selectmen, and transmit the same to the sheriff of the county, thirty days at least before the last Wednesday in May; *or shall*[1] cause returns of the same to be made to the office of the secretary of the commonwealth, seventeen days at least before the said day, *who*[2] shall lay the same before the senate and the house of representatives, on the last Wednesday in May, to be by them examined; and, in case of an election by a majority of *votes through the commonwealth*,[3] the choice shall be by them declared and published. But if no person shall have a majority of votes, the house of representatives shall, by ballot, elect two out of four persons who had the highest number of votes, if so many shall have been voted for, but if otherwise, out of the number voted for; and make return to the senate of the two persons so elected, on which the senate shall proceed, by ballot, to elect one, who shall be declared governor.

[IV.] [4] (*Transposed.*)

IV. [V.] The governor shall have authority, from time to time, at his discretion, to assemble and call together the counsellors of this commonwealth, for the time being; and the governor, with

1 "and the sheriff shall transmit the same to the secretary's office, seventeen days at least before the said last Wednesday in May; or the selectmen may"
2 "and the secretary" 3 "all the votes returned,"
4 Here follows in this draught a form of oath for the governor. But this, with several other articles, was transposed by the convention, as appears by the subjoined extract from the journal, February 25, 1780: — "It was then moved and seconded, that there be a distinct chapter in the constitution for the several oaths and tests which have been, or shall be, prescribed to be taken and subscribed by the officers of government, and the two houses of assembly, and also for the list of persons excluded from a seat in either house, and such miscellaneous matters as the convention shall direct to stand in the same." See under the head of Chapter VI., p. 260.

the said counsellors, or five of them at least, shall and may, from time to time, hold and keep a council for the ordering and directing the affairs of the commonwealth *according to law*.[1]

V. [VI.] The governor, with advice of council, shall have full power and authority, in the recess of the general court, to prorogue the same from time to time, not exceeding ninety days in any one recess of the said court; and during the session of the said court, to adjourn or prorogue it to any time the two houses shall desire, and to dissolve the same, at their request, or on the Wednesday next preceding the last Wednesday in May; and to call it together sooner than the time to which it may be adjourned or prorogued, if the welfare of the commonwealth shall require the same.[2]

VI. [VII.] In cases of disagreement between the two houses, with regard to the [3] time of adjournment or prorogation, the governor, with advice of the council, shall have a right to adjourn or prorogue the general court, [4] as he shall determine the public good shall require.

VII. [VIII.] The governor of this commonwealth, for the time being, shall be the commander-in-chief of the army and navy, and of all the military forces of the state by sea and land; and shall have full power, by himself or by any [chief] commander, or other officer or officers, [to be appointed by him,] from time to time to train, instruct, exercise, and govern the militia and navy; and for the special defence and safety of the commonwealth, to assemble in martial array and put in warlike posture, the inhabitants thereof; and to lead and conduct them, and with them to encounter, [expulse,] repel, resist, [5] and

[1] "agreeably to the constitution and the laws of the land."

[2] The several clauses of this article are transposed in the constitution as adopted; but, as the language is not changed, it is not deemed important to note the variations.

The following clauses were added:—

"And in case of any infectious distemper prevailing in the place where the said court is next, at any time, to convene, or any other cause happening, whereby danger may arise to the health or lives of the members from their attendance, he may direct the session to be held at some other, the most convenient, place within the state.

"And the governor shall dissolve the said general court, on the day next preceding the last Wednesday in May."

[3] "necessity, expediency, or"

[4] "not exceeding ninety days,"

[5] "expel"

pursue, by force of arms, as well by sea as by land, within or without the limits of this commonwealth, and also to kill, slay, destroy, [1] and conquer, by all fitting ways, enterprises, and means whatsoever, all and every such person and persons as shall at any time hereafter, in a hostile manner, attempt or enterprise the destruction, invasion, detriment, or annoyance of this commonwealth; and to use and exercise over the army and navy, and over the militia in actual service, the law martial in time of war, *invasion, or rebellion,* [2] as occasion shall necessarily require; [and also from time to time to erect forts, and to fortify any place or places within the said commonwealth, and the same to furnish with all necessary ammunition, provisions, and stores of war, for offence or defence, and to commit from time to time the custody and government of the same to such person or persons as to him shall seem meet; and in times of emergency the said forts and fortifications to demolish at his discretion;] and to take and surprise, by all ways and means whatsoever, all and every such person or persons, with their ships, arms, ammunition, and other goods, as shall in a hostile manner invade, or attempt the invading, conquering, or annoying this commonwealth, and [in fine] that the governor be intrusted with all [3] other powers, incident to the offices of captain-general and commander-in-chief and admiral, to be exercised agreeably to the rules and regulations of the constitution and the laws of the land [4]

Provided, that the said governor shall not at any time hereafter, by virtue of any power by this constitution granted, or hereafter to be granted to him by the legislature, transport any of the inhabitants of this commonwealth, or oblige them to march, out of the limits of the same, without their free and voluntary consent, or the consent of the general court, [5] [nor grant commissions for exercising the law martial upon any of the inhabitants of this commonwealth, without the advice and consent of the council of the same.]

VIII. [IX.] The power of pardoning offences, except such

[1] "if necessary,"

[2] "or invasion, and also in time of rebellion declared by the legislature to exist,"

[3] "these and"

[4] "and not otherwise."

[5] "except so far as may be necessary to march or transport them by land or water, for the defence of such part of the state to which they cannot otherwise conveniently have access"

as persons may be convicted of before the senate by an impeachment of the house, shall be in the governor, by and with the advice of council. But no charter of pardon granted by the governor, with advice of the council, before conviction, shall avail the party pleading the same, notwithstanding any general or particular expressions contained therein, descriptive of the offence or offences intended to be pardoned.

IX. [X.] All judicial officers, the attorney-general, the solicitor-general, all sheriffs, coroners, registers of probate, [and registers of maritime courts,] shall be nominated and appointed by the governor, by and with the advice and consent of the council; and every such nomination shall be made by the governor, and made at least seven days prior to such appointment.

[XI.] [All officers of the militia shall be appointed by the governor, with the advice and consent of the council; he first nominating them seven days at least before the appointment.][1]

[1] The convention, in adopting the following substitute, made what, in the opinion of Mr. Adams, was the second material alteration of the executive power: —

"X. The captains and subalterns of the militia shall be elected by the written votes of the train-band and alarm list of their respective companies, of twenty-one years of age and upwards. The field-officers of regiments shall be elected by the written votes of the captains and subalterns of their respective regiments. The brigadiers shall be elected, in like manner, by the field-officers of their respective brigades. And such officers, so elected, shall be commissioned by the governor, who shall determine their rank.

"The legislature shall, by standing laws, direct the time and manner of convening the electors, and of collecting votes, and of certifying to the governor the officers elected.

"The major-generals shall be appointed by the senate and house of representatives, each having a negative upon the other; and be commissioned by the governor.

"And if the electors of brigadiers, field-officers, captains, or subalterns shall neglect or refuse to make such elections, after being duly notified, according to the laws for the time being, then the governor, with advice of council, shall appoint suitable persons to fill such offices.

"And no officer duly commissioned to command in the militia, shall be removed from his office, but by the address of both houses to the governor, or by fair trial in court-martial, pursuant to the laws of the commonwealth for the time being.

"The commanding officers of regiments shall appoint their adjutants and quarter-masters; the brigadiers their brigade-majors; and the major-generals their aids; and the governor shall appoint the adjutant-general.

"The governor, with advice of council, shall appoint all officers of the continental army, whom, by the confederation of the United States, it is provided that this commonwealth shall appoint; as, also, all officers of forts and garrisons.

"The divisions of the militia into brigades, regiments, and companies, made in pursuance of the militia laws now in force, shall be considered as the proper

XI. [XII.] *All*[1] moneys shall be issued out of the treasury of this commonwealth, and disposed of [2] by warrant, under the hand of the governor for the time being, with the advice and consent of the council, for the necessary defence and support of the commonwealth; and for the protection and preservation of the inhabitants thereof, agreeably to the acts and resolves of the general court.

XII. [XIII.] All public boards, the commissary-general, all superintending officers of public magazines and stores, belonging to this commonwealth, and all commanding officers of forts and garrisons within the same, shall, once in every three months officially, and without requisition, and at other times, when required by the governor, deliver to him an account of all goods, stores, provisions, ammunition, cannon with their appendages, and small arms with their accoutrements, and of all other public property whatever under their care respectively; distinguishing the quantity, number, quality, and kind of each, as particularly as may be; together with the condition of such forts and garrisons. And the said commanding officers shall exhibit to the governor, when required by him, true and exact plans of such forts, and of the land and sea, or harbor or harbors, adjacent.

And the said boards, and all public officers, shall communicate to the governor, as soon as may be after receiving the same, all letters, despatches, and intelligences, of a public nature, which shall be directed to them respectively.

[XIV. And to prevent an undue influence in this commonwealth, which the first magistrate thereof may acquire, by the

divisions of the militia of this commonwealth, until the same shall be altered in pursuance of some future law."

The convention of 1820 once more revised this section by adopting the following article, which was ratified by the people: —

"Article 5. In the elections of captains and subalterns of the militia, all the members of their respective companies, as well those under as those above the age of twenty-one years, shall have a right to vote."

And, with regard to removals, at the close of the fourth article of amendments: —

"All officers commissioned to command in the militia, may be removed from office in such manner as the legislature may, by law, prescribe."

[1] "No"

[2] "(except such sums as may be appropriated for the redemption of bills of credit or treasurer's notes, or for the payment of interest arising thereon) but"

long possession of the important powers and trusts of that office; as also to stimulate others to qualify themselves for the service of the public in the highest stations, no man shall be eligible as governor of this commonwealth, more than five years in any seven years.][1]

XIII. [XV.] As the public good requires that the governor should not be under the undue influence of any of the members of the general court, by a dependence on them for his support; that he should, in all cases, act with freedom for the benefit of the public; that he should not have his attention necessarily diverted from that object to his private concerns; and that he should maintain the dignity of the commonwealth, in the character of its chief magistrate, it is necessary that he should have an honorable stated salary, of a fixed and permanent value, amply sufficient for those purposes, and established by standing laws; and it shall be among the first acts of the general court, after the commencement of this constitution, to establish such salary by law accordingly.

Permanent and honorable salaries shall also be established by law for the justices of the *superior*[2] court.

And if it shall be found that any of the salaries aforesaid, so established, are insufficient, they shall from time to time be enlarged, as the general court shall judge proper.

SECTION II.

Lieutenant-Governor, [*and the ascertaining the Value of the Money mentioned in this Constitution, as Qualifications to Office, &c.*]

I. THERE shall be annually elected a lieutenant-governor of the Commonwealth of Massachusetts, whose title shall be HIS HONOR, and who shall be qualified, in point of religion, pro-

[1] This provision, establishing a principle of rotation in office, was stricken out by the convention. The practice under the constitution shows that, without any express limitation, but a single case has occurred exceeding seven years, as the longest period that any individual remains governor.

The transfer to the general government of the most important attributes of executive power, has materially lessened the consequence of this post as an object of ambition. But in analyzing the theory upon which this plan is based, it is obvious that this section was incorporated for the purpose of counterbalancing the effect of the gift in other sections of such extensive powers as might make the chief magistrate's place the object of great contention. The convention preferred to take away the powers, on the one hand, and withdraw the limitation, on the other.

[2] "supreme judicial"

perty, and residence in the commonwealth, in the same manner with the governor. *He shall be chosen on the same day, in the same manner, and by the same persons.*[1] The return of the votes for this officer, and the declaration of his election shall be in the same manner. And if no one person shall be found to have a majority of *votes*,[2] the vacancy shall be filled by the senate and house of representatives, in the same manner as the governor is to be elected, in case no one person *has*[3] a majority of *votes*[4] to be governor.

II. *The lieutenant-governor shall always be, ex-officio, a member, and, in the absence of the governor, president, of the council.*[5]

III. Whenever the chair of the governor shall be vacant, by reason of his death, or absence from the commonwealth, or otherwise, the lieutenant-governor, for the time being, shall, during such vacancy, [6] have and exercise all the powers and authorities which, by this constitution, the governor is vested with, when personally present.

[IV. and V.] (*Transposed.* *See Chapter VI.* p. 264.)

SECTION III.

Council, and the Manner of settling Elections by the Legislature; [*Oaths to be taken, &c.*]

I. There shall be a council for advising the governor in the executive part of government, to consist of nine persons besides the lieutenant-governor, whom the governor, for the time being, shall have full power and authority, from time to time, at his discretion, to assemble and call together. And the governor, with the said counsellors, or five of them at least, shall and may, from time to time, hold and keep a council, for the ordering and

[1] "And the day and manner of his election, and the qualifications of the electors shall be the same as are required in the election of a governor."

[2] "all the votes returned" [3] "shall have"

[4] "the votes of the people"

[5] Substitute:—

"The governor, and, in his absence, the lieutenant-governor, shall be president of the council, but shall have no vote in council. And the lieutenant-governor shall always be a member of the council, except when the chair of the governor shall be vacant."

[6] "perform all the duties incumbent upon the governor, and shall"

directing the affairs of the commonwealth, according to the laws of the land.

II. Nine counsellors shall *out of*[1] the persons returned for counsellors and senators, [be annually chosen,] on the last Wednesday in May, by the joint ballot of the senators and representatives assembled in one room. [2] The seats of the persons thus elected *into the council*[3] and accepting the trust, shall be vacated in the senate, [and, in this manner, the number of senators shall be reduced to thirty-one.][4]

III. The counsellors, in the civil arrangements of the commonwealth, shall have rank next after the lieutenant-governor.

IV. Not more than two counsellors shall be chosen out of any one *county*[5] of this commonwealth.

V. The resolutions and advice of the council shall be recorded in a register, and signed by the members present; and this record may be called for at any time by either house of the legislature; and any member of the council may insert his opinion contrary to the resolution of the majority.

VI. Whenever the office of the governor and lieutenant-governor shall be vacant, by reason of death, absence, or otherwise, then the council, or the major part of them, shall, during such vacancy, have full power and authority to do and execute

1 "be annually chosen from among"

2 "And in case there shall not be found, upon the first choice, the whole number of nine persons who will accept a seat in the council, the deficiency shall be made up by the electors aforesaid, from among the people at large; and the number of senators left shall constitute the senate for the year."

3 "from the senate."

4 The last or thirteenth amendment of the constitution, adopted in 1840, contains the following modification of the provisions respecting the council:—

"Nine counsellors shall be annually chosen from among the people at large, on the first Wednesday of January, or as soon thereafter as may be, by the joint ballot of the senators and representatives, assembled in one room, who shall, as soon as may be, in like manner, fill up any vacancies that may happen in the council, by death, resignation, or otherwise. No person shall be elected a counsellor who has not been an inhabitant of this commonwealth for the term of five years, immediately preceding his election; and not more than one counsellor shall be chosen from any one senatorial district in the commonwealth."

5 "district"

all and every such acts, matters, and things, as the governor or the lieutenant-governor might or could, by virtue of this constitution, do or execute, if they, or either of them, were personally present.

VII. And whereas, the elections appointed to be made by this constitution, on the last Wednesday in May, annually, by the two houses of the legislature, may not be completed on that day, the said elections may be adjourned from day to day, until the same shall be completed. And the order of elections shall be as follows, — the vacancies in the senate, if any, shall first be filled up; the governor and lieutenant-governor shall then be elected, provided there should be no choice of them by the people; and afterwards the two houses shall proceed to the election of the council.

[VIII.] (*Transposed. See Chapter VI.* p. 262.)

SECTION IV.

Secretary, Treasurer, Commissary, &c.

I. The secretary, treasurer, and receiver-general, and the commissary-general, notaries-public, and naval officers shall be chosen annually, by joint ballot of the senators and representatives, in one room. And that the citizens of this commonwealth may be assured, from time to time, that the moneys remaining in the public treasury, upon the settlement and liquidation of the public accounts, are their property, no man shall be eligible as treasurer and receiver-general more than five years successively.[1]

[1] The convention of 1820 framed an article somewhat changing these modes of appointment, which was approved by the people, and is now the fourth of the amendments:—

"Art. 4. Notaries-public shall be appointed by the governor, in the same manner as judicial officers are appointed, and shall hold their offices during seven years, unless sooner removed by the governor, with the consent of the council, upon the address of both houses of the legislature.

"In case the office of secretary or treasurer of the commonwealth shall become vacant from any cause, during the recess of the general court, the governor, with the advice and consent of the council, shall nominate and appoint, under such regulations as may be prescribed by law, a competent and suitable person to such vacant office, who shall hold the same until a successor shall be appointed by the general court.

"Whenever the exigencies of the commonwealth shall require the appoint-

II. The records of the commonwealth shall be kept in the office of the secretary, who [1] shall attend the governor and council, the senate, and house of representatives in person, or by his deputies, as they shall respectively require.

CHAPTER III. [IV.]

Judiciary Power.

ART. I. THE tenure, that all commission officers *by law hold*[2] in their offices, shall be expressed in their respective commissions. All judicial officers, duly appointed, commissioned, and sworn, shall hold their offices during good behavior [3] provided, nevertheless, the governor, with consent of the council, may remove them upon the address of both houses of the legislature. [And all other officers, appointed by the governor and council, shall hold their offices during pleasure.]

[II.] (*Transposed. See Chapter VI.* p. 263.)

II. [III.] *The senate, nevertheless,*[4] as well as the governor and council, shall have authority to require the opinions of the *judges*[5] upon important questions of law, and upon solemn occasions.

III. [IV.] In order that the people may not suffer from the long continuance in place of any justice of the peace, who shall fail of discharging the important duties of his office with ability or fidelity, all commissions of justices of the peace shall expire and become void, in the term of seven years from their respective dates; and, upon the expiration of any commission, the

ment of a commissary-general, he shall be nominated, appointed, and commissioned in such manner as the legislature may, by law, prescribe."

1 "may appoint his deputies, for whose conduct he shall be accountable; and he"

2 "shall by law have"

3 "excepting such concerning whom there is different provision made in this constitution;"

4 "Each branch of the legislature"

5 "justices of the supreme judicial court"

governor and council may, if necessary, renew such commissions or appoint another person,[1] as shall most conduce to the well-being of the commonwealth.

IV. [V.] The judges of probate of wills and for granting letters of administration, shall hold their courts at such place or places, on fixed days, as the convenience of the people shall require. And the legislature shall, from time to time, hereafter, appoint such times and places; until which appointments, the said courts shall be holden at the times and places which the respective judges shall direct.

V. [VI.] All causes of marriage, divorce, and alimony, [shall be determined by the senate;] and all appeals from the judges of probate shall be heard and determined by the governor and council, until the legislature shall, by law, make other provision.[2]

CHAPTER IV. [V.]

Delegates to Congress, [*Commissions, Writs, Indictments, &c.; Confirmation of Laws, Habeas Corpus, and enacting Style.*]

Art. I. The delegates of this commonwealth to the Congress of the United States [of America,] shall, *on the second Wednesday of November, if the general court be then sitting, or on the second Wednesday of the session next after,*[3] be elected annually, by the joint ballot of the senate and house of representatives, assembled together in one room [4] They shall have commissions under the hand of the governor, and under the great seal of the commonwealth; but may be recalled at any time within the year, and others chosen and commissioned, in the same manner in their stead.[5]

[1] "same may, if necessary, be renewed, or another person appointed,"

[2] This power was early transferred by statute to the supreme judicial court of the state.

[3] "sometime in the month of June,"

[4] "to serve in congress for one year, to commence on the first Monday in November, then next ensuing."

[5] This article was annulled by the adoption of the federal constitution. Six other articles contained in this chapter were transposed to the sixth chapter, by vote of the convention.

CHAPTER V. [VI.]

The University at Cambridge, and Encouragement of Literature, &c.

SECTION I.

The University.

ART. I. WHEREAS our wise and pious ancestors, so early as the year one thousand six hundred and thirty-six, laid the foundation of Harvard College, in which university many persons of great eminence have by the blessing of God been initiated in those arts and sciences which qualified them for public employments, both in church and state. And whereas the encouragement of arts and sciences, and all good literature, tends to the honor of God, the advantage of the Christian religion, and the great benefit of this and the other United States of America, — it is declared, That the PRESIDENT AND FELLOWS OF HARVARD COLLEGE, in their corporate capacity, and their successors in that capacity, their officers and servants, shall have, hold, use, exercise, and enjoy, all the powers, authorities, rights, liberties, privileges, immunities, and franchises, which they now have, or are entitled to have, hold, use, exercise, and enjoy; and the same are hereby ratified and confirmed unto them, the said President and Fellows of Harvard College, and to their successors, and to their officers and servants, respectively, forever.

II. And whereas there have been at sundry times, by divers persons, gifts, grants, devises, of houses, lands, tenements, goods, chattels, legacies, and conveyances, heretofore made, either to Harvard College, in Cambridge, in New England, or to the President and Fellows of Harvard College, or to the said College, by some other description, under several charters successively; — IT IS DECLARED, That all the said gifts, grants, devises, legacies, and conveyances, are hereby forever confirmed unto the President and Fellows of Harvard College, and to their successors, in the capacity aforesaid, according to the true intent and meaning of the donor or donors, grantor or grantors, devisor or devisors.

III. And whereas, by an act of the general court of the colony of Massachusetts Bay, passed in the year one thousand six hundred and forty-two, the governor and deputy governor for the time being, and all the magistrates of that jurisdiction, were, with the president, and a number of the clergy, in the said act described, constituted the overseers of Harvard College. And it being necessary, in this new constitution of government, to ascertain who shall be deemed successors to the said governor, deputy-governor, and magistrates; — IT IS DECLARED, That the Governor, Lieutenant-Governor, Council, and Senate of this Commonwealth, are, and shall be deemed, their successors; who, with the President of Harvard College for the time being, together with the Ministers of the Congregational Churches in the towns of Cambridge, Watertown, Charlestown, Boston, Roxbury, and Dorchester, mentioned in the said act, shall be and hereby are, vested with all the powers and authority belonging, or in any way appertaining to the overseers of Harvard College. PROVIDED, that nothing herein shall be construed to prevent the legislature of this commonwealth from making such alterations in the government of the said university as shall be conducive to its advantage, and the interest of the republic of letters, in as full a manner as might have been done by the legislature of the province of the Massachusetts Bay.[2]

[1] "late"

[2] In Quincy's *History of Harvard University*, the following account of the origin of these three articles is given: —

"In September, 1779, the convention assembled to frame a constitution for the State of Massachusetts, being in session, a committee was raised in relation to the college, and was instructed 'to prepare an article to be inserted in the new constitution, for confirming its privileges, and for such other purposes as they shall think proper, after consulting with the corporation of the college.' James Bowdoin, President of the Convention, communicated these proceedings to the corporation; and a committee of the board was raised to take the subject into consideration. On the seventh of the ensuing October, this committee made a report, recapitulating all the leading facts of the constitutional history of the college, and submitting two proposals to be laid before the convention, containing articles to be inserted into the constitution of the commonwealth, on the interests of the college. These proposals, being accepted by the corporation and approved by the overseers, were subsequently adopted by the state convention, and now constitute distinct articles in the constitution of Massachusetts. . . . . The new organization of the state government also rendered it necessary to insert a third article in the same section of the constitution, declarative of the branches of the government which should succeed to the office of overseers, in place of those which were abrogated."

It should be remarked, that from the journal of the convention, it is clear there was no special committee raised in relation to the college. This unimportant

SECTION II.

The Encouragement of Literature, &c.

Wisdom and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties, and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of legislators and magistrates, in all future periods of this commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the university at Cambridge, public schools and grammar schools in the towns; to encourage private societies and public institutions, rewards and immunities for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings, sincerity, good humor, and all social affections and generous sentiments among the people.[1]

error grows out of the confounding of the convention with the grand committee of thirty, of which Mr. Bowdoin, the president, was chairman. It was by this committee that a vote was adopted, instructing the sub-committee of three, which was to have the general draught in its charge, to prepare the article, in conjunction with the corporation, as above described. The first and second articles were drawn up by a committee of the latter body, and entitled "Proposals to be laid before the Committee of the Convention." They were, with only one or two verbal alterations, incorporated into the general report. The third article seems to have emanated from the sub-committee of the convention.

[1] This feature of the constitution of Massachusetts is peculiar, and in one sense original with Mr. Adams. The recognition of the obligation of a state to promote a higher and more extended policy than is embraced in the protection of the temporal interests and political rights of the individual, however understood among enlightened minds, had not at that time been formally made a part of the organic law. Those clauses, since inserted in other state constitutions, which, with more or less of fulness, acknowledge the same principle, are all manifestly taken from this source. The following history of the origin of it is taken from an account given by the author in 1809:—

"In travelling from Boston to Philadelphia, in 1774, 5, 6, and 7, I had several times amused myself, at Norwalk in Connecticut, with the very curious collection of birds and insects of American production made by Mr. Arnold; a collection which he afterwards sold to Governor Tryon, who sold it to Sir Ashton Lever, in whose apartments in London I afterwards viewed it again. This collection was so singular a thing that it made a deep impression upon me, and I could not but consider it a reproach to my country, that so little was known, even to herself, of her natural history.

"When I was in Europe, in the years 1778 and 1779, in the commission to the

CHAPTER VI.[1]

Oaths and Subscriptions; Incompatibility of and Exclusion from Offices; Pecuniary Qualifications; Commissions; Writs; Confirmation of Laws; Habeas Corpus; the Enacting Style; Continuance of Officers; Provision for a future Revisal of the Constitution, &c.

I. (*From Chapter III. sect. I. art.* 4.) *The*[2] person chosen governor, [3] and accepting the trust, shall, [in the presence of the two houses, and] before he proceed to execute the duties

King of France, with Dr. Franklin and Mr. Arthur Lee, I had opportunities to see the king's collections and many others, which increased my wishes that nature might be examined and studied in my own country, as it was in others.

"In France, among the academicians, and other men of science and letters, I was frequently entertained with inquiries concerning the Philosophical Society of Philadelphia, and with eulogiums on the wisdom of that institution, and encomiums on some publications in their transactions. These conversations suggested to me the idea of such an establishment at Boston, where I knew there was as much love of science, and as many gentlemen who were capable of pursuing it, as in any other city of its size.

"In 1779, I returned to Boston in the French frigate La Sensible, with the Chevalier de la Luzerne and M. Marbois. The corporation of Harvard College gave a public dinner in honor of the French ambassador and his suite, and did me the honor of an invitation to dine with them. At table, in the Philosophy Chamber, I chanced to sit next to Dr. Cooper. I entertained him during the whole of the time we were together, with an account of Arnold's collections, the collections I had seen in Europe, the compliments I had heard in France upon the Philosophical Society at Philadelphia, and concluded with proposing that the future legislature of Massachusetts should institute an academy of arts and sciences.

"The doctor at first hesitated, thought it would be difficult to find members who would attend to it; but his principal objection was, that it would injure Harvard College, by setting up a rival to it that might draw the attention and affections of the public in some degree from it. To this I answered, — first, that there were certainly men of learning enough that might compose a society sufficiently numerous; and secondly, that instead of being a rival to the university, it would be an honor and advantage to it. That the president and principal professors would no doubt be always members of it; and the meetings might be ordered, wholly or in part, at the college and in that room. The doctor at length appeared better satisfied; and I entreated him to propagate the idea and the plan, as far and as soon as his discretion would justify. The doctor accordingly

[1] The articles contained in this chapter, as it stands in the constitution, were scattered among the preceding ones, and from them transposed to here.

[2] "Any"

[3] "lieutenant-governor, counsellor, senator, or representative,"

of his [1] office, make and subscribe the following declaration, [and take the following oaths, to be administered by the president of the senate,] namely, —

I, A B, [being declared duly elected governor of the commonwealth of Massachusetts,] do [now] declare, that I believe [and profess] the Christian religion, *from*[2] a firm persuasion of its truth; and that I am seised and possessed, in my own right, of the property required by *law*,[3] as one qualification for *that office*.[4]

[5] I, A B, do solemnly swear, [6] [that I bear faith and true

did diffuse the project so judiciously and effectually, that the first legislature under the new constitution adopted and established it by law.

"Afterwards, when attending the convention for forming the constitution, I mentioned the subject to several of the members, and when I was appointed by the sub-committee to make a draught of a project of a constitution, to be laid before the convention, my mind and heart were so full of this subject, that I inserted the chapter fifth, section second.

"I was somewhat apprehensive that criticism and objections would be made to the section, and particularly that the 'natural history,' and the 'good humor,' would be stricken out; but the whole was received very kindly, and passed the convention unanimously, without amendment."

It is a singularity, perhaps worthy of note in connection with these injunctions, that the individuals who have since been elevated by the popular voice to the chief offices of the state, with a single exception, have not been noted among their fellow-citizens for any superior acquisitions of learning or intellectual culture. A considerable number have not gone through the higher grades of education in Massachusetts at all.

[1] "place or" [2] "and have" [3] "the constitution,"

[4] "the office or place to which I am elected."

[5] Previous to this second oath, the following is here inserted as a substitute for the greater part of the other forms: —

"And the governor, lieutenant-governor, and counsellors shall make and subscribe the said declaration, in the presence of the two houses of assembly; and the senators and representatives first elected under this constitution, before the president and five of the council of the former constitution, and forever afterwards, before the governor and council for the time being.

"And every person chosen to either of the places or offices aforesaid, as also any person appointed or commissioned to any judicial, executive, military, or other office under the government, shall, before he enters on the discharge of the business of his place or office, take and subscribe the following declaration and oaths or affirmations, namely, —

"'I, A B, do truly and sincerely acknowledge, profess, testify, and declare, that the commonwealth of Massachusetts is, and of right ought to be, a free, sovereign, and independent state; and I do swear, that I will bear true faith and allegiance to the said commonwealth, and that I will defend the same against traitorous conspiracies and all hostile attempts whatsoever. And that I do renounce and abjure all allegiance, subjection, and obedience to the king, queen, or government of Great Britain, (as the case may be,) and every other foreign power, whatsoever. And that no foreign prince, person, prelate, state or potentate, hath, or ought to have, any jurisdiction, superiority, preëminence, authority, dispensing, or other power, in any matter, civil, ecclesiastical, or spiritual, within this commonwealth; except the authority and power which is or may be vested

[6] "and affirm,"

allegiance to the commonwealth of Massachusetts;] that I will faithfully and impartially discharge and perform all the duties incumbent on me, as [a governor of this commonwealth,] according to the best of my abilities and understanding, agreeably to the rules and regulations of the constitution, and [1] *that I will not attempt or consent to a violation thereof.* So help me God.

(*From Chapter III. sect. III. art.* 8.) [The lieutenant-governor, counsellors, senators, and members of the house of representatives shall, before they enter on the execution of their respective offices, make and subscribe the same declaration, and take the same oath, (*mutatis mutandis,*) which the governor is directed by this constitution to make, subscribe, and take.]

[And every person appointed to any civil or military office of this commonwealth shall, previous to his entering on the execution of his office, make and subscribe the following declaration, (*mutatis mutandis,*) namely, —

I, A B, being appointed , do now declare, that I believe and profess the Christian religion, from a firm persuasion of the truth thereof.]

[And he shall likewise take an oath of the form following, (*mutatis mutandis,*)] namely, —

[I, A B, do solemnly swear, that I will bear faith and true allegiance to the commonwealth of Massachusetts; that I will faithfully and impartially discharge and perform all the duties incumbent on me, as , according to the best of my abilities and understanding, agreeably to the rules and regulations of the constitution; and that I will not attempt or consent to a violation thereof. So help me God.]

[Provided, notwithstanding, that any person so appointed, who has conscientious scruples relative to taking oaths, may be admitted to make solemn affirmation, under the pains and penalties of perjury, to the truth of the matters contained in the form of the said oath, instead of taking the same.][2]

by their constituents in the congress of the United States. And I do further testify and declare, that no man or body of men hath, or can have, any right to absolve or discharge me from the obligation of this oath, declaration, or affirmation; and that I do make this acknowledgment, profession, testimony, declaration, denial, renunciation, and abjuration, heartily and truly, according to the common meaning and acceptation of the foregoing words, without any equivocation, mental evasion, or secret reservation, whatsoever. So help me GOD.'"

[1] "the laws of the commonwealth."

[2] "Provided, always, that when any person, chosen or appointed as afore-

II. (*From Chapter IV. art.* 2.) [No justice of the superior court of judicature, court of assize, and general jail delivery, shall have a seat in the senate or house of representatives.][1]

said, shall be of the denomination of the people called Quakers, and shall decline taking the said oaths, he shall make his affirmation in the foregoing form, and subscribe the same, omitting the words '*I do swear*,' '*and abjure*,' '*oath or*,' '*and abjuration*,' in the first oath; and in the second oath, the words '*swear and*;' and in each of them the words '*So help me God;*' subjoining instead thereof, 'This I do under the pains and penalties of perjury.'

"And the said oaths or affirmations shall be taken and subscribed by the governor, lieutenant-governor, and counsellors, before the president of the senate, in the presence of the two houses of assembly; and by the senators and representatives first elected under this constitution, before the president and five of the council of the former constitution; and forever afterwards, before the governor and council for the time being; and by the residue of the officers aforesaid, before such persons, and in such manner as, from time to time, shall be prescribed by the legislature."

The convention of 1820 recommended, and the people adopted, the following, which make the sixth and seventh articles of amendment: —

"Art. 6. Instead of the oath of allegiance prescribed by the constitution, the following oath shall be taken and subscribed by every person chosen or appointed to any office, civil or military, under the government of this commonwealth, before he shall enter on the duties of his office, to wit: —

"'I, A B, do solemnly swear, that I will bear true faith and allegiance to the commonwealth of Massachusetts, and will support the constitution thereof. So help me God.'

"*Provided*, That when any person shall be of the denomination called Quakers, and shall decline taking said oath, he shall make his affirmation in the foregoing form, omitting the word 'swear,' and inserting, instead thereof, the word 'affirm;' and omitting the words 'so help me God,' and subjoining, instead thereof, the words, 'This I do, under the pains and penalties of perjury.'

"Art. 7. No oath, declaration, or subscription, excepting the oath prescribed in the preceding article, and the oath of office, shall be required of the governor, lieutenant-governor, counsellors, senators, or representatives, to qualify them to perform the duties of their respective offices."

[1] This article was much discussed in the convention, and gradually enlarged and extended, until it embraced the following restrictions: —

"II. No governor, lieutenant-governor, or judge of the supreme judicial court shall hold any other office or place, under the authority of this commonwealth, except such as by this constitution they are admitted to hold, saving that the judges of the said court may hold the offices of justices of the peace through the state; nor shall they hold any other place or office, or receive any pension or salary from any other state, or government, or power, whatever.

"No person shall be capable of holding or exercising, at the same time, within this state, more than one of the following offices, namely, — judge of probate, sheriff, register of probate, or register of deeds; and never more than any two offices which are to be held by appointment of the governor, or the governor and council, or the senate, or the house of representatives, or by the election of the people of the state at large, or of the people of any county, military offices and the offices of justice of the peace excepted, shall be held by one person.

"No person holding the office of judge of the supreme judicial court, secretary, attorney-general, solicitor-general, treasurer or receiver-general, judge of probate, commissary-general, president, professor or instructor of Harvard College, sheriff, clerk of the house of representatives, register of probate, register of

III. (*From Chapter III. sect. II. art.* 4.) ["The respective values assigned by the several articles of this constitution to the property necessary to qualify the subjects of this commonwealth to be electors, and also to be elected into the several offices, for the holding of which such qualifications are required, shall always be computed in silver, at the rate of six shillings and eight pence per ounce."][1]

(*From Chapter III. sect. II. art.* 5.) And it shall be in the power of the legislature, from time to time, to increase such qualifications, [2] of the persons to be elected to offices, as the circumstances of the commonwealth shall require.

IV. (*From Chapter V. art.* 2.) All commissions shall be in the name of the commonwealth of Massachusetts, signed by the

deeds, clerk of the supreme judicial court, clerk of the inferior court of common pleas, or officer of the customs, including in this description naval officers, shall at the same time have a seat in the senate or house of representatives; but their being chosen or appointed to, and accepting the same, shall operate as a resignation of their seat in the senate or house of representatives; and the place so vacated shall be filled up.

"And the same rule shall take place in case any judge of the said supreme judicial court, or judge of probate, shall accept a seat in council; or any counsellor shall accept of either of those offices or places.

"And no person shall ever be admitted to hold a seat in the legislature, or any office of trust or importance under the government of this commonwealth, who shall, in the due course of law, have been convicted of bribery or corruption in obtaining an election or appointment."

This was again modified by the convention of 1820, which prepared the following article of amendment, and the people approved it:—

Amendment.

"Art. 8. No judge of any court of this commonwealth, (except the court of sessions,) and no person holding any office under the authority of the United States, (postmasters excepted,) shall, at the same time, hold the office of governor, lieutenant-governor, or counsellor, or have a seat in the senate or house of representatives of this commonwealth; and no judge of any court in this commonwealth, (except the court of sessions,) nor the attorney-general, solicitor-general, county attorney, clerk of any court, sheriff, treasurer and receiver-general, register of probate, nor register of deeds, shall continue to hold his said office, after being elected a member of the Congress of the United States, and accepting that trust; but the acceptance of such trust, by any of the officers aforesaid, shall be deemed and taken to be a resignation of his said office; and judges of the courts of common pleas shall hold no other office under the government of this commonwealth, the office of justice of the peace and militia offices excepted."

[1] "III. In all cases where sums of money are mentioned in this constitution, the value thereof shall be computed in silver, at six shillings and eight pence per ounce."

[2] "as to property,"

This article, with the amendment, is joined to and makes a part of the third or preceding one in the constitution.

governor, and attested by the secretary or his deputy, and have the great seal of the commonwealth affixed thereto.

V. (*From Chapter V. art.* 3.) All writs issuing out of the clerk's office in any of the courts of law, shall be in the name of the commonwealth of Massachusetts. They shall be under the seal of the court from whence they issue. They shall bear test of the [chief justice, or] first [or senior] justice of the court, to which they shall be returnable, [1] and be signed by the clerk of such court."

VI. (*From Chapter V. art.* 5.) All the [statute] laws [of the province, colony, or state of Massachusetts Bay, *the common law, and all such parts of the English or British statutes as*] *have*[2] been adopted, used, and approved in the [said] province, colony, or state, [3] and usually practised on in the courts of law, shall still remain and be in full force, until altered or repealed by the legislature; such parts only excepted as are repugnant to the rights and liberties contained in this constitution.

VII. (*From Chapter V. art.* 6.) The privilege and benefit of the writ of *habeas corpus* shall be enjoyed in this commonwealth in the most free, easy, cheap, expeditious, and ample manner; and shall not be suspended by the legislature, except upon the most urgent and pressing occasions, and for a [short and] limited time, [4]

VIII. (*From Chapter V. art.* 7.) The enacting style, in making and passing all acts, statutes, and laws, shall be: "Be it enacted, by [his excellency the governor,] the senate, and house of representatives, in general court assembled, and by the authority of the same;" [or "By his honor the lieutenant-governor," &c.; or "The honorable the council," &c., as the case may be.]

1 "who is not a party,"
2 "which have heretofore"
3 "of Massachusetts Bay,"
4 "not exceeding twelve months."

[CHAPTER VII. AND LAST.][1]

[*Continuance of Officers, &c.*]

IX. To the end there may be no failure of justice, or danger arise to the commonwealth from a change of the form of government, all officers, civil and military, holding commissions under the government and people of Massachusetts Bay in New England, and all other officers of the said government and people, at the time this constitution shall take effect, shall have, hold, use, exercise, and enjoy all the powers and authority to them granted or committed, until other persons shall be appointed in their stead. And all courts of law shall proceed in the execution of the business of their respective departments; and all the executive and legislative officers, bodies, and powers, shall continue in full force, in the enjoyment and exercise of all their trusts, employments, and authority, until the general court, and

[1] This caption was stricken out by the convention, and the article was inserted as the ninth in the sixth chapter. The following wholly new articles were added as the tenth and eleventh: —

"X. In order the more effectually to adhere to the principles of the constitution, and to correct those violations which by any means shall be made herein, as well as to form such alterations as from experience shall be found necessary, the general court, which shall be in the year of our Lord, one thousand seven hundred and ninety-five, shall issue precepts to the selectmen of the several towns, and to the assessors of the unincorporated plantations, directing them to convene the qualified voters of their respective towns and plantations, for the purpose of collecting their sentiments on the necessity or expediency of revising the constitution, in order to amendments.

"And if it shall appear, by the returns made, that two thirds of the qualified voters throughout the state, who shall assemble and vote in consequence of the said precepts, are in favor of such revision or amendment, the general court shall issue precepts, or direct them to be issued from the secretary's office to the several towns, to elect delegates to meet in convention, for the purpose aforesaid.

"The said delegates to be chosen in the same manner and proportion as their representatives in the second branch of the legislature are by this constitution to be chosen.

"XI. This form of government shall be enrolled on parchment, and deposited in the secretary's office, and be a part of the laws of the land; and printed copies thereof shall be prefixed to the book containing the laws of this commonwealth, in all future editions of the said laws."

One other article was adopted, at the recommendation of the convention of 1820, intended to open the way to further changes, without the necessity of resorting to a special assembly and a general revision. Thus far, in thirty years, under the operation of this rule, only three amendments have been adopted; but

the supreme and executive officers, under this constitution, are designated, and invested with their respective trusts, powers, and authority.

each of them has worked more fundamental alterations of the original instrument than were made by all the recommendations of the convention; and it is not unreasonable to infer, that an avenue has been opened by which many more will be hereafter introduced: —

"Art. 9. If at any time hereafter any specific and particular amendment or amendments to the constitution be proposed in the general court, and agreed to by a majority of the senators and two thirds of the members of the house of representatives present, and voting thereon, such proposed amendment or amendments shall be entered on the journals of the two houses, with the yeas and nays taken thereon, and referred to the general court then next to be chosen, and shall be published; and if in the general court next chosen, as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of the senators and two thirds of the members of the house of representatives present and voting thereon; then it shall be the duty of the general court to submit such proposed amendment or amendments to the people; and if they shall be approved and ratified by a majority of the qualified voters voting thereon, at meetings legally warned and holden for that purpose, they shall become part of the constitution of this commonwealth."

THE DEFENCE.

A

DEFENCE

OF THE

CONSTITUTIONS OF GOVERNMENT

OF THE

UNITED STATES OF AMERICA,

AGAINST THE ATTACK OF M. TURGOT, IN HIS LETTER TO DR. PRICE, DATED THE TWENTY-SECOND DAY OF MARCH, 1778.

BY

JOHN ADAMS.

"All Nature's difference keeps all Nature's peace." POPE.

IN THREE VOLUMES.

VOL. I.

PREFACE

BY THE EDITOR.

THE constitution adopted by the State of Massachusetts, in 1780, did not go into operation without meeting serious obstacles in the first few years. The hostility entertained towards an independent executive head and a double legislative department had shown itself very decidedly in the convention,[1] and it rather gained than lost strength, from the disturbed condition of things and the distress among the people immediately after the revolution. Complaints of the aristocratic character of the senate, of the governor's salary, and of the courts, grew louder and louder until the year 1786, when they took the shape of armed resistance to the public authorities, threatening the entire overthrow of the government.

Simultaneously with this state of affairs in America, and growing out of them, discussions of the nature of government again came into vogue, both in England and France. Among other writers, Dr. Richard Price, who had all along viewed with the most lively interest the progress of the revolution, published at the close of the struggle a small tract entitled "Observations on the Importance of the American Revolution and the Means of making it a Benefit to the World," embodying many useful suggestions and much good advice to the people of the United States. At the close of this pamphlet he added a letter which had been addressed to him, in 1778, by the celebrated philosopher and minister of France, M. Turgot, wherein, among many strictures upon the civil institutions of America, he unequivocally and roundly condemns the whole theory of government which Mr. Adams had labored to sustain. Viewing it from a French position, in which the centralization of power has, under every change of form, even the most republican, been the leading idea, he attacks the state constitutions as slavishly borrowed from the system of the mother country, and advocates the collecting of all authority in one centre as the only true substitute. The passage relating to it is prefixed to this republication of Mr. Adams's Defence, as well because it seems essential to a right understanding of the allusions constantly occurring to it in that work, as because it contains reflections upon other subjects which have not lost their interest even at this day. This letter was soon followed by a pamphlet written by the celebrated Mirabeau, reviewing the positions of Dr. Price and of M. Turgot, and particularly enforcing, in his declamatory style, the views of the latter respecting a simple and central government. These views were

[1] The clergy partook strongly of the feeling at this time. See the Memoir of Dr. Thacher, in *Mass. Hist. Society Collections*, vol. viii. p. 281.

generally adopted by that school of philosophers which had risen into great influence at this time in France, and they were well known to be sustained by the high authority of Dr. Franklin, as well as of other distinguished men in America.

The occasion seemed to require a defence of the forms already adopted in some, though not in all of the states. Two of them had chosen to act upon the idea of a single source of legislative power, and others were known to be inclined to follow the example. The confederation had fallen into ruins, and projects were already in agitation for the reconstruction of the federal system. Mr. Adams, who was at the moment living in England, decided to come forward once more and fortify his position with both reasoning and authority. Such is the origin of this book, and the explanation of its title. It is a defence of the form of constitutions of the several states, and not, as some have imagined, of that of the United States, in which indeed the leading ideas are embodied, but which was not made until afterwards. Although from the day that the latter system went into successful operation it has been more and more throwing into the shade the state organizations, it must be apparent to every observer of the complex machine, that its favorable movement, in a great measure, depends upon the good condition of those less prominent parts. But this defence equally applies to the one and the other, being in its nature a generalization of ultimate principles, upon which that class of governments is founded which draw their powers from bases long established in all human, civilized society.

Viewed with the searching eye of criticism, the main defect of this book as a treatise appears to be its want of methodical treatment of the subject; a fault which is owing to the hasty manner in which it was prepared to meet a particular crisis, having been commenced on the fourth of October, 1786, and finished on the twenty-sixth of December of the next year. The author was always prompted to write by a sense of the necessity of immediate exertion, and, therefore, in this as in all other instances of his composition, he took too little care of the shape in which his thoughts were clothed.[1] The pride of authorship never belonged to him, even to the degree to which it ought to belong to every man conscious of powers to contribute something to benefit his own generation. The editor had not advanced many pages in his work of revision of the many and glaring errors of the press, before he became impressed with the necessity of deciding a question lying deeper than these. The choice was before him, on the one hand, of implicitly following the text and the order of arrangement of the former editions, however obvious the disadvantage to a work of too much learning and profound reflection not to deserve placing in a better permanent form, or, on the other, of exercising within certain limits the liberty of revision and of correction. To give a single example: in the second volume,

[1] "These letters have been produced upon the spur of a particular occasion, which made it necessary to write and publish with precipitation, or it might have been useless to have published at all. The whole have been done in the midst of other occupations, in so much hurry, that scarce a moment could be spared to correct the style, adjust the method, pare off excrescences, or even obliterate repetition; in all which respects it stands in need of an apology."

This reasoning, found at the close of the book, might avail to excuse errors in the first edition; but the author declined to return to his labors when requested by the printer, Stockdale, to do so for his reprint in 1794.

page 111, there occurs an obvious transposition of several pages of the text, the effect of which is to derange the regular order of dates, as given in Machiavel's History of Florence, which the author steadily follows elsewhere, and to conclude with the first half of an account, the other portion of which had already been inserted out of any connection thirty pages earlier. Neither is there any reason to be seen in the substance of the story, for this violent change. There can be no cause for doubt that this was the result of an accidental misplacement of the sheets sent to the printer of the first edition, which has been faithfully transmitted to each succeeding one. So in regard to the numerous errors in dates and names, in French and Italian, as well in the translation, as in the original when placed in the notes; all these equally serve to show that if the work deserve to be retained at all, it imperatively requires to be freed from every minor imperfection. Conscious of the responsibility resting upon him for such a decision, the editor, after deliberate reflection, determined to enter upon a thorough revision. Hence it is that the original, unmeaning, and arbitrary division of the subject into letters addressed to a friend, has been made to give way to a more natural one of chapters, embracing the whole or a certain portion of some one topic. Passages, manifestly misplaced, have been brought together. Mistakes of the press have been corrected, and an elaborate comparison has been made of all the abridgments, translations, and quotations of passages to be found in other writers, with the originals, wherever these have been attainable. In all cases in which casual mistakes of the meaning have been made in the hurry of translation from languages with which the author did not become acquainted until late in life, corrections have been tacitly made; and the liberty has been sometimes taken of rearranging the members of a sentence too closely transferred from the Italian idiom, so as to free them from what in English appears unnatural inversion. More important errors sometimes occur, but these have been left to be pointed out in the notes. The changes thus made will prove to be considerable in number, yet, throughout, great care has been taken in no way to impair the meaning, or even to modify the original text of the author. It is obvious that with this notice, and with the original editions still in existence, and to be found in most public libraries, no room is left for a suspicion of surprise, either upon the reader or upon the public.

The remark has been made, that a careful collation with the original authorities has been attempted where practicable. But it should be added, that in some cases it has not been possible to obtain them. This is one of that class of works which, by reason of the deficiency of the libraries, could at no moment, even down to this time, have been written in America. Of the Italian historians referred to, several have been found only in the collection of books left by the author himself.

A few notes to the first volume have been found, a portion of them by the well-known Granville Sharp, and the others by Mr. Brand Hollis, with both of whom the author was in habits of intimacy when in England. Although not very material, they have been inserted with the initial of the writer attached.

The first volume was printed and published in octavo form, as a complete work, by C. Dilly, in London, in the year 1787. It was forthwith transmitted to the United States, where it arrived in the midst of the agitation caused by

the assembling of the convention to form the federal constitution. An edition in duodecimo was immediately printed in Boston, another in New York, and another in Philadelphia, by Hall and Sellers, which was much circulated in the convention, and undoubtedly contributed somewhat to give a direction to the opinions of the members. Encouraged by the favorable reception of this volume, the author redoubled his efforts, and in the succeeding year brought out two additional ones. He would have done better had he allowed himself further time. But the French Revolution was impending, the federal constitution was struggling against popular opposition, and the public attention of all Europe was more than ever drawn to the examination of republican forms. The work was translated into French, with the omission of the Italian history, on the ground of the facility had by Europeans of access to the original authorities, and published at Paris, in two volumes, in 1792, together with some notes and observations by M. de la Croix. These notes do not appear to be such as to form an exception in favor of that writer from the sweeping condemnation passed upon his works by Lord Brougham.[1] Not much time elapsed before another edition was published in London, by John Stockdale. This edition of 1794 is accompanied with an engraved head of the author, taken from Copley's full-length picture, now in the possession of Harvard College. By the permission of that institution, an engraving of the entire picture has now for the first time been taken, and accompanies this work. Lastly, William Cobbett published another edition in Philadelphia, in the year 1797. These are all the editions of the work which the editor has been enabled to discover, although, in some of the author's later correspondence, he alludes to others. Sufficient has been shown to prove the existence of what must have been, considering its nature, regarded as a great demand. Neither has it been easy at any time since to obtain a perfect copy, without paying for it a full price.

Speculations upon government have gone out of vogue in the United States; partly by reason of a general satisfaction with the existing form of constitution, and a disposition to do nothing to disturb it; partly for another and more singular cause. In few countries, even those most despotically governed, can greater unwillingness prevail among educated men, to publish opinions on this subject, conflicting with received ideas. The experience of the author of the Defence furnished a memorable lesson of the danger incurred by a public man through an unreserved expression of his convictions, however honestly entertained. Written in a foreign country, without a thought of personal consequences, and solely to maintain a system recommended long before, the volumes, nevertheless, furnished, for many years after his return home, an unfailing armory, from which weapons to be used against him could be drawn at pleasure by the party in political opposition. Single passages, appearing to favor monarchy or an aristocracy, were torn from the context to prove that the writer was in his heart an enemy to liberty; whilst those which looked the other way, and exposed the defects of both, were overlooked or forgotten. These are the common practices of political warfare, and are only deserving of notice in this connection, on account of the effect they have had to destroy the independence of judgment indispensable to all effective scientific investigation. Upon a fair sur-

[1] *Political Philosophy*, vol. iii. pp. 322, 340.

vey of the entire reasoning embodied in these volumes, it does not seem probable that the author intended to advocate the placing a greater share of power in the hands of his one executive head, than is now actually wielded by the President of the United States, with the exception of the restrictions held by the senate. So, likewise, the senate has probably proved to the full as conservative a body, in all its tendencies, as he designed to approve. The country, however, was just then emerging from an old into a new system, and was not prepared to weigh questions of science in very minute scales. The author was met with a storm of pamphlets and newspaper assaults, which pursued him as long as he remained in public life. Whether owing to this cause or not, the fact is certain, that no leading political man, since his day, has been known to express a serious doubt of the immaculate nature of the government established by the majority. The science has become reduced in America to a eulogy of the Constitution of the United States; and we are compelled to look abroad, to Sismondi, De Tocqueville, Lord Brougham, and other writers, who have studied on a broader scale, for the only philosophical examinations that are free from a bias seriously affecting their permanent value.

Very certainly this is not the spirit in which the Defence was written. Whether the opinions which it expresses prove to be sustained in the course of ages, by the experience of republican systems, or not, they were formed upon no immediate or narrow observation, but resulted from extensive generalization. As such, they must be regarded hereafter as the author's contribution to science, upon which whatever may belong to him of name and fame must ultimately rest. It is not to be supposed that, in all the essential parts of the practical operation of a republican system in the United States, he has judged rightly. Thus far, some of his apprehensions of evil have proved to be without foundation, by reason of his not giving sufficient attention to the neutralizing forces which have been put in operation. But his deductions having been made from observations of the general laws regulating the action of mankind, during the whole period of recorded history, their ultimate soundness or unsoundness will only be established after a much longer term of trial of free institutions throughout the world than has yet been allowed them. It is matter of sufficient gratulation for the present generation, that the restraints recommended by the author, and generally adopted in the United States, have so far proved not inconsistent with the largest liberty, and have guaranteed to society the enjoyment of many of the substantial blessings that can be expected to flow from a well-ordered constitution.

EXTRACT

OF A LETTER OF M. TURGOT TO DR. RICHARD PRICE.

PARIS, 22 March, 1778.

BUT it appeared that you imputed to me the indiscretion of having flown in the face of the general opinion of my nation; and there I think you neither did justice to me nor to my nation, which is much more enlightened than is generally supposed among you, and in which perhaps it is easier than even with you, to call the public attention to ideas of reason. I judge so from the infatuation of the British in the prospect of conquering America, which continued until the adventure of Burgoyne made them, in some degree, open their eyes. I judge so from the system of monopoly and exclusion, which governs all your political writers upon commerce, except Mr. Adam Smith and Dean Tucker, a system which is the true prime cause of your separation from your colonies. I judge so from all your polemic writings upon questions which have been agitated for twenty years back, and in which, before yours appeared, I do not recollect to have read a single piece in which the true point in dispute has been rightly taken up. I have been unable to conceive how a nation which hath so successfully cultivated every branch of the natural sciences, can have continued so much beneath herself in the most interesting science of the whole, that of the public good; a science wherein the liberty of the press, which she alone enjoys, must have given her a mighty advantage over all the rest of Europe. Is it national pride which hath hindered you from making the utmost of that advantage? Is it because you were something better off than others, that you have turned all your speculations towards persuading yourselves that you were quite happy? Is it the spirit of party, and the wish to form self-support out of popular opinions, which hath retarded your progress by leading your politicians to treat as empty metaphysics all those speculations which tend to establish some fixed principles respecting the rights and true interests of individuals and of nations? How comes it to pass that you are almost the first among your writers who have given just notions of liberty, and who have exposed the falsehood of that threadbare sentiment of the greatest class of even the most republican writers, that *liberty consists in being subject only to laws*, as if a man oppressed by an unjust law was free? This would not be true, even if we suppose all the laws to be the work of the entire nation assembled; because, in fact, the individual has certain rights which the nation cannot take from him, but by violence, and an illegal use of force. Although you have had regard to this truth, and have explained yourself thereon, yet perhaps it merits your care to develop it more at large, considering the little attention which hath been paid to it by even the most zealous partisans of liberty.

It is also a strange thing that it should not be counted in England a trifling

observation to say that one nation can never have a right to govern another; and that such a government could have no foundation but that of force, upon which also are supported robbery and tyranny. That the tyranny of a people is, of all known in the world, the most cruel and intolerable, leaving no remedy for the oppressed; whereas a single despot is at length stopped in his career by self-interest; he has the check of remorse, or that of public opinion; but a multitude makes no calculations, feels no remorse, and decrees to itself glory, when, in fact, it deserves the utmost disgrace.

Events are to the English nation a terrible commentary upon your book. For some months they have been falling headlong with accelerated rapidity. The knot is untied in regard to America. Lo! she is independent irrecoverably. Will she be free and happy? Will this new people, situated so advantageously to give the world the example of a constitution wherein man may enjoy all his rights, exercise freely his whole faculties, and be governed only by nature, by reason, and by justice, know how to form such a constitution — know how to fix it upon everlasting foundations, by guarding against all causes of division and corruption, which would sap it by degrees and overturn it?

I am not satisfied, I own, with any constitutions which have as yet been framed by the different American States. You blame with reason that of Pennsylvania, for exacting a religious test upon admission into the representative body. It is much worse in others. There is one of them, I think that of the Jerseys, which requires * . . . .

I see in the greatest number an unreasonable imitation of the usages of England. Instead of bringing all the authorities into one, that of the nation, they have established different bodies, a house of representatives, a council, a governor, because England has a house of commons, a house of lords, and a king. They undertake to balance these different authorities, as if the same equilibrium of powers which has been thought necessary to balance the enormous preponderance of royalty, could be of any use in republics, formed upon the equality of all the citizens; and as if every article which constitutes different bodies, was not a source of divisions. By striving to prevent imaginary dangers, they have created real ones. They wish to have nothing to fear from the clergy, and yet unite them under the barrier of a common proscription. By rendering them ineligible, they become formed into a body, and such a one as is foreign to the state. Why should one citizen, who has the same interest as others in the common defence of liberty and property, be excluded from contributing towards it his genius and virtues, because he is of a profession in which genius and virtue are essentials? The clergy are only dangerous when they compose a body in the state, — when they conceive themselves to have rights and interests as a body; or when it has been devised to have a religion established by law, as if men could have any right or any interest in regulating each other's consciences; as if an individual could sacrifice to civil society those opinions on which he thinks his eternal salvation depends, or as if mankind were to be saved or damned by the lump. Wherever true toleration, that is to say, the absolute incompetency of government over the conscience of individuals, is established, there an ecclesi-

* (*Note by Dr. Price.*) "It is the constitution of Delaware that imposes the test here meant."

astic, when he is admitted into the national assembly, is but a citizen; when he is excluded from it, he becomes again an ecclesiastic.

I do not perceive that there has been sufficient care to reduce to the lowest possible number the kinds of business which the government of each state is to manage; or to separate the object of legislation from those of the general and from those of the particular and local assemblies, which, by performing all the functions of detail in government, may free the general assemblies from engaging therein, and so to take from the members of these latter all means, and, perhaps, all desire to abuse an authority, which would only be occupied about objects general in their nature, and, therefore, unconnected with the little passions which agitate mankind.

Nor do I perceive that due attention has been paid to the great distinction, and the only one founded in nature, between two classes of men. I mean those who are proprietors in lands and those who are not; to their interests, and, consequently, to their different rights, with respect to legislation, to the administration of justice and of the police, to the contribution for public expenses, and to their employments.

No fixed principle is established in regard to imposts. Each state is supposed to be at liberty to tax itself at pleasure, and to lay its taxes upon persons, consumptions, or importations, that is to say, to erect an interest contrary to that of the other states.

They suppose in all the states, that they have a right to regulate commerce. They even authorize the executive bodies or the governors to prohibit the exportation of certain products upon particular occasions; so far are they from seeing that the law of entire liberty of all commerce is a corollary of the right of property; so far are they still involved in the mists of European illusions.

In the general union of the states with one another, I do not see a coalition, a melting of all the parts together, so as to make the body one and homogeneous. It is only an aggregate of parts, always too separate, and which have a continual tendency to divide themselves, from the diversity of their laws, their manners, their opinions; from the inequality of their future progress. It is only a copy of the republic of Holland, and this had no occasion, like that of America, to dread the possible growth of any one of its provinces. This whole edifice has been supported, until now, upon the false basis of very ancient and very vulgar policy; upon the prejudice which nations, which provinces may have, concerning interests as a province or a nation, different from those which individuals have of being free, and defending their properties against robbers and conquerors; — a pretended interest in carrying on more commerce than others, not in buying merchandise of foreigners, but in forcing these to consume our productions and the works of our manufacturers; a pretended interest in having more extensive territory, in acquiring such and such a province, such and such an island, such and such a town; an interest in inspiring other nations with dread; an interest in excelling them in the glory of arms, or that of arts and sciences.

Each of these prejudices is cherished in Europe, because the ancient rivalry of nations and the ambition of princes obliges all states to be in arms, for defence against their armed neighbors, and to regard a military force as the principal object of government. Such is the good fortune of America, that she cannot have, for a long time, an external enemy to fear, if she does not become self-

divided; therefore she may and ought to estimate at their true value those pretended interests, those grounds of discord, which are all that endanger her liberty. The sacred principle of freedom of commerce being considered as the necessary consequence of the right of property, all the pretended interests of trade vanish before it. The pretended interest of possessing more or less territory vanishes also, when the territory is justly considered as not belonging to nations, but to the individual proprietors of the soil; and when the question, whether such a canton or such a village ought to belong to such a province, or such a state, is not decided by the pretended interest of that province or that state, but by the interest which the inhabitants of the canton or village have in assembling themselves to transact their affairs in places the most convenient of access; when that interest, being measured by the length or shortness of the way which a man can go to manage his most important, without too much injury to his common concerns, becomes the natural and physical measure of the extent of the jurisdiction of states, and establishes throughout an equilibrium of extent and power, which annihilates all the danger of inequality, and all pretensions of superiority.

The interest of being dreaded becomes null, when we make no demands, and when we are in a situation not to be attacked, even by a considerable force, with any hope of success.

The glory of arms cannot compare with the felicity of living in peace. The glory of arts and sciences belongs to every one who has spirit to acquire it. There is a harvest of this kind abundantly sufficient for everybody; the field of discoveries cannot be overtilled, and ALL profit by the discoveries of all.

I imagine that the Americans have not felt these truths so strongly as they ought to be felt by them, for the security of the happiness of their posterity. I blame not their leaders. There was a necessity of providing against the exigencies of the moment, by some sort of union, against an enemy actually present and formidable; there was not time to correct the defects in constitutions, or in the models of the different states. But there should be a dread of perpetuating them, and an application to the means of uniting opinions and interests, and of reducing them to uniform principles throughout all the states.

PREFACE.

The arts and sciences, in general, during the three or four last centuries, have had a regular course of progressive improvement. The inventions in mechanic arts, the discoveries in natural philosophy, navigation, and commerce, and the advancement of civilization and humanity, have occasioned changes in the condition of the world, and the human character, which would have astonished the most refined nations of antiquity. A continuation of similar exertions is every day rendering Europe more and more like one community, or single family. Even in the theory and practice of government, in all the simple monarchies, considerable improvements have been made. The checks and balances of republican governments have been in some degree adopted at the courts of princes. By the erection of various tribunals, to register the laws, and exercise the judicial power — by indulging the petitions and remonstrances of subjects, until by habit they are regarded as rights — a control has been established over ministers of state, and the royal councils, which, in some degree, approaches the spirit of republics. Property is generally secure, and personal liberty seldom invaded. The press has great influence, even where it is not expressly tolerated; and the public opinion must be respected by a minister, or his place becomes insecure. Commerce begins to thrive; and if religious toleration were established, personal liberty a little more protected, by giving an absolute right to demand a public trial in a certain reasonable time, and the states were invested with a few more privileges, or rather restored to some that have been taken away, these governments would be brought to as great a degree of perfection, they would approach as near to the character of governments of laws and not of men, as their nature will probably admit of. In so general a refinement, or more properly a reformation of manners and improvement in science, is it not

unaccountable that the knowledge of the principles and construction of free governments, in which the happiness of life, and even the further progress of improvement in education and society, in knowledge and virtue, are so deeply interested, should have remained at a full stand for two or three thousand years?

According to a story in Herodotus, the nature of monarchy, aristocracy, and democracy, and the advantages and inconveniences of each, were as well understood at the time of the neighing of the horse of Darius, as they are at this hour. A variety of mixtures of these simple species were conceived and attempted, with various success, by the Greeks and Romans. Representations, instead of collections, of the people; a total separation of the executive from the legislative power, and of the judicial from both; and a balance in the legislature, by three independent, equal branches, are perhaps the only three discoveries in the constitution of a free government, since the institution of Lycurgus. Even these have been so unfortunate, that they have never spread: the first has been given up by all the nations, excepting one, which had once adopted it; and the other two, reduced to practice, if not invented, by the English nation, have never been imitated by any other, except their own descendants in America.

While it would be rash to say, that nothing further can be done to bring a free government, in all its parts, still nearer to perfection, the representations of the people are most obviously susceptible of improvement. The end to be aimed at, in the formation of a representative assembly, seems to be the sense of the people, the public voice. The perfection of the portrait consists in its likeness. Numbers, or property, or both, should be the rule; and the proportions of electors and members an affair of calculation. The duration should not be so long that the deputy should have time to forget the opinions of his constituents. Corruption in elections is the great enemy of freedom. Among the provisions to prevent it, more frequent elections, and a more general privilege of voting, are not all that might be devised. Dividing the districts, diminishing the distance of travel, and confining the choice to residents, would be great advances towards the annihilation of corruption. The modern aristocracies of Holland, Venice, Bern, &c., have tempered themselves with innumerable checks, by which they have given

a great degree of stability to that form of government; and though liberty and life can never be there enjoyed so well as in a free republic, none is perhaps more capable of profound sagacity. We shall learn to prize the checks and balances of a free government, and even those of the modern aristocracies, if we recollect the miseries of Greece, which arose from its ignorance of them. The only balance attempted against the ancient kings was a body of nobles; and the consequences were perpetual alternations of rebellion and tyranny, and the butchery of thousands upon every revolution from one to the other. When kings were abolished, aristocracies tyrannized; and then no balance was attempted but between aristocracy and democracy. This, in the nature of things, could be no balance at all, and therefore the pendulum was forever on the swing.

It is impossible to read in Thucydides,* his account of the factions and confusions throughout all Greece, which were introduced by this want of an equilibrium, without horror. "During the few days that Eurymedon, with his troops, continued at Corcyra, the people of that city extended the massacre to all whom they judged their enemies. The crime alleged was, their attempt to overturn the democracy. Some perished merely through private enmity; some, by the hands of the borrower, on account of the money they had lent. Every kind of death, every dreadful act, was perpetrated. Fathers slew their children; some were dragged from altars, some were butchered at them; numbers, immured in temples, were starved. The contagion spread through the whole extent of Greece; factions raged in every city; the licentious many contending for the Athenians, and the aspiring few for the Lacedæmonians. The consequence was, seditions in cities, with all their numerous and tragical incidents."

"Such things ever will be," says Thucydides, "so long as human nature continues the same." But if this nervous historian had known a balance of three powers, he would not have pronounced the distemper so incurable, but would have added —*so long as parties in cities remain unbalanced.* He adds,— "Words lost their signification; brutal rashness was fortitude; prudence, cowardice; modesty, effeminacy; and being wise in

* Lib. iii. 81, 82.

every thing, to be good for nothing: the hot temper was manly valor; calm deliberation, plausible knavery; he who boiled with indignation, was trustworthy; and he who presumed to contradict, was ever suspected. Connection of blood was less regarded than transient acquaintance; associations were not formed for mutual advantage, consistent with law, but for rapine against all law; trust was only communication of guilt; revenge was more valued, than never to have suffered an injury; perjuries were master-pieces of cunning; the dupes only blushed, the villains most impudently triumphed."

"The source of all these evils was a thirst of power, from rapacious and ambitious passions. The men of large influence, some contending for the just equality of the democratical, and others for the fair decorum of aristocratical government, by artful sounds, embarrassed those communities, for their own private lucre, by the keenest spirit, the most daring projects, and most dreadful machinations. Revenge, not limited by justice or the public welfare, was measured only by such retaliation as was judged the sweetest; by capital condemnations, by iniquitous sentences, and by glutting the present rancor of their hearts with their own hands. The pious and upright conduct was on both sides disregarded; the moderate citizens fell victims to both. Seditions introduced every species of outrageous wickedness into the Grecian manners. Sincerity was laughed out of countenance; the whole order of human life was confounded; the human temper, too apt to transgress in spite of laws, now having gained the ascendant over law, seemed to glory that it was too strong for justice, and an enemy to all superiority."

Mr. Hume has collected, from Diodorus Siculus alone, a few massacres which happened in only sixty of the most polished years of Greece: — "From Sybaris, 500 nobles banished; of Chians, 600 citizens; at Ephesus, 340 killed, 1000 banished; of Cyrenians, 500 nobles killed, all the rest banished; the Corinthians killed 120, banished 500; Phœbidas banished 300 Bœotians. Upon the fall of the Lacedæmonians, democracies were restored in many cities, and severe vengeance taken of the nobles; the banished nobles returning, butchered their adversaries at Phialæ, in Corinth, in Megara, in Phliasia, where they killed 300 of the people; but these again revolting, killed above 600 of the nobles, and banished the rest. In Arcadia, 1400 banished, besides many

killed; the banished retired to Sparta and Pallantium; the latter were delivered up to their countrymen, and all killed. Of the banished from Argos and Thebes, there were 500 in the Spartan army. The people, before the usurpation of Agathocles, had banished 600 nobles; afterwards that tyrant, in concurrence with the people, killed 4000 nobles, and banished 6000; and killed 4000 people at Gela; his brother banished 8000 from Syracuse. The inhabitants of Ægesta, to the number of 40,000, were killed, man, woman, and child, for the sake of their money; all the relations of the Libyan army, fathers, brothers, children, killed; 7000 exiles killed after capitulation. These numbers, compared with the population of those cities, are prodigious; yet Agathocles was a man of character, and not to be suspected of wanton cruelty, contrary to the maxims of his age."[1]

Such were the fashionable outrages of unbalanced parties. In the name of human and divine benevolence, is such a system as this to be recommended to Americans, in this age of the world? Human nature is as incapable now of going through revolutions with temper and sobriety, with patience and prudence, or without fury and madness, as it was among the Greeks so long ago. The latest revolution that we read of was conducted, at least on one side, in the Grecian style, with laconic energy; and with a little Attic salt, at least, without too much patience, foresight, and prudence, on the other. Without three orders, and an effectual balance between them, in every American constitution, it must be destined to frequent unavoidable revolutions; though they are delayed a few years, they must come in time. The United States are large and populous nations, in comparison with the Grecian commonwealths, or even the Swiss cantons; and they are growing every day more disproportionate, and therefore less capable of being held together by simple governments. Countries that increase in population so rapidly as the States of America did, even during such an impoverishing and destructive war as the last was, are not to be long bound with silken threads; lions, young or old, will not be bound by cobwebs. It would be better for America, it is nevertheless agreed, to ring all the changes with the whole set of bells, and go through all the revolutions of the Grecian States, rather than establish an

[1] On the Populousness of Ancient Nations. Hume's *Essays*, vol. i. p. 477, note BB.

absolute monarchy among them, notwithstanding all the great and real improvements which have been made in that kind of government.

The objection to it is not because it is supported by nobles, and a subordination of ranks; for all governments, even the most democratical, are supported by a subordination of offices, and of ranks too. None ever existed without it but in a state of anarchy and outrage, in a contempt of law and justice, no better than no government. But the nobles, in the European monarchies, support them more by opposing than promoting their ordinary views. The kings are supported by their armies; the nobles support the crown, as it is in full possession of the gift of all employments; but they support it still more by checking its ministers, and preventing them from running into abuses of power and wanton despotism; otherwise the people would be pushed to extremities and insurrections. It is thus that the nobles reconcile the monarchical authority to the obedience of the subjects; but take away the standing armies, and leave the nobles to themselves, and in a few years, they would overturn every monarchy in Europe, and erect aristocracies.

It is become a kind of fashion among writers, to admit, as a maxim, that if you could be always sure of a wise, active, and virtuous prince, monarchy would be the best of governments. But this is so far from being admissible, that it will forever remain true, that a free government has a great advantage over a simple monarchy. The best and wisest prince, by means of a freer communication with his people, and the greater opportunities to collect the best advice from the best of his subjects, would have an immense advantage in a free state over a monarchy. A senate consisting of all that is most noble, wealthy, and able in the nation, with a right to counsel the crown at all times, is a check to ministers, and a security against abuses, such as a body of nobles who never meet, and have no such right, can never supply. Another assembly, composed of representatives chosen by the people in all parts, gives free access to the whole nation, and communicates all its wants, knowledge, projects, and wishes to government; it excites emulation among all classes, removes complaints, redresses grievances, affords opportunities of exertion to genius, though in obscurity, and gives full scope to all the faculties of man; it opens a passage for every specu-

lation to the legislature, to administration, and to the public; it gives a universal energy to the human character, in every part of the state, such as never can be obtained in a monarchy.

There is a third particular which deserves attention both from governments and people. In a simple monarchy, the ministers of state can never know their friends from their enemies; secret cabals undermine their influence, and blast their reputation. This occasions a jealousy ever anxious and irritated, which never thinks the government safe without an encouragement of informers and spies, throughout every part of the state, who interrupt the tranquillity of private life, destroy the confidence of families in their own domestics and in one another, and poison freedom in its sweetest retirements. In a free government, on the contrary, the ministers can have no enemies of consequence but among the members of the great or little council, where every man is obliged to take his side, and declare his opinion, upon every question. This circumstance alone, to every manly mind, would be sufficient to decide the preference in favor of a free government. Even secrecy, where the executive is entire in one hand, is as easily and surely preserved in a free government, as in a simple monarchy; and as to despatch, all the simple monarchies of the whole universe may be defied to produce greater or more numerous examples of it than are to be found in English history. An Alexander, or a Frederic, possessed of the prerogatives only of a king of England, and leading his own armies, would never find himself embarrassed or delayed in any honest enterprise. He might be restrained, indeed, from running mad, and from making conquests to the ruin of his nation, merely for his own glory; but this is no argument against a free government.

There can be no free government without a democratical branch in the constitution. Monarchies and aristocracies are in possession of the voice and influence of every university and academy in Europe. Democracy, simple democracy, never had a patron among men of letters. Democratical mixtures in government have lost almost all the advocates they ever had out of England and America. Men of letters must have a great deal of praise, and some of the necessaries, conveniences, and ornaments of life. Monarchies and aristocracies pay well and applaud liberally. The people have almost always expected to

be served gratis, and to be paid for the honor of serving them; and their applauses and adorations are bestowed too often on artifices and tricks, on hypocrisy and superstition, on flattery, bribes, and largesses. It is no wonder then that democracies and democratical mixtures are annihilated all over Europe, except on a barren rock, a paltry fen, an inaccessible mountain, or an impenetrable forest. The people of England, to their immortal honor, are hitherto an exception; but, to the humiliation of human nature, they show very often that they are like other men. The people in America have now the best opportunity and the greatest trust in their hands, that Providence ever committed to so small a number, since the transgression of the first pair; if they betray their trust, their guilt will merit even greater punishment than other nations have suffered, and the indignation of Heaven. If there is one certain truth to be collected from the history of all ages, it is this; that the people's rights and liberties, and the democratical mixture in a constitution, can never be preserved without a strong executive, or, in other words, without separating the executive from the legislative power. If the executive power, or any considerable part of it, is left in the hands either of an aristocratical or a democratical assembly, it will corrupt the legislature as necessarily as rust corrupts iron, or as arsenic poisons the human body; and when the legislature is corrupted, the people are undone.

The rich, the well-born, and the able, acquire an influence among the people that will soon be too much for simple honesty and plain sense, in a house of representatives. The most illustrious of them must, therefore, be separated from the mass, and placed by themselves in a senate; this is, to all honest and useful intents, an ostracism.* A member of a senate, of immense

* "Mr. Pulteney and Mr. Pitt were ostracized, but the intent of their being so was neither honest nor useful. They lost, however, their popular influence, by their removal into the house of lords, which proves the use of a senate, as contended for. Unluckily, indeed, these examples go somewhat further. They show how the ostracism of a senate may be abused." S.

No such abuse as is here pointed out is likely to happen through any form of popular election. The working of the present constitution of the United States, in the particular noticed in the text, appears thus far to have excited little observation. It would be a curious, and not unprofitable subject of speculation, to consider what might have been the effect upon the government, had several leading members of the senate been, for an equally long period, in the house of representatives.

wealth, the most respected birth, and transcendent abilities, has no influence in the nation, in comparison of what he would have in a single representative assembly. When a senate exists, the most powerful man in the state may be safely admitted into the house of representatives, because the people have it in their power to remove him into the senate as soon as his influence becomes dangerous. The senate becomes the great object of ambition; and the richest and the most sagacious wish to merit an advancement to it by services to the public in the house. When he has obtained the object of his wishes, you may still hope for the benefits of his exertions, without dreading his passions; for the executive power being in other hands, he has lost much of his influence with the people, and can govern very few votes more than his own among the senators.

It was the general opinion of ancient nations, that the Divinity alone was adequate to the important office of giving laws to men. The Greeks entertained this prejudice throughout all their dispersions; the Romans cultivated the same popular delusion; and modern nations, in the consecration of kings, and in several superstitious chimeras of divine right in princes and nobles, are nearly unanimous in preserving remnants of it. Even the venerable magistrates of Amersfort devoutly believe themselves God's vicegerents. Is it that obedience to the laws can be obtained from mankind in no other manner? Are the jealousy of power, and the envy of superiority, so strong in all men, that no considerations of public or private utility are sufficient to engage their submission to rules for their own happiness? Or is the disposition to imposture so prevalent in men of experience, that their private views of ambition and avarice can be accomplished only by artifice? It was a tradition in antiquity that the laws of Crete were dictated to Minos by the inspiration of Jupiter. This legislator and his brother Rhadamanthus were both his sons; once in nine years they went to converse with their father, to propose questions concerning the wants of the people; and his answers were recorded as laws for their government. The laws of Lacedæmon were communicated by Apollo to Lycurgus; and, lest the meaning of the deity should not have been perfectly comprehended, or correctly expressed, they were afterwards confirmed by his oracle at Delphos. Among the Romans, Numa was indebted for those laws which procured the prosperity of his

country to his conversations with Egeria. The Greeks imported these mysteries from Egypt and the East, whose despotisms, from the remotest antiquity to this day, have been founded in the same solemn empiricism; their emperors and nobles being all descended from their gods. Woden and Thor were divinities too; and their posterity ruled a thousand years in the north by the strength of a like credulity. Manco Capac was the child of the sun, the visible deity of the Peruvians; and transmitted his divinity, as well as his earthly dignity and authority, through a line of incas. And the rudest tribes of savages in North America have certain families from which their leaders are always chosen, under the immediate protection of the god War. There is nothing in which mankind have been more unanimous; yet nothing can be inferred from it more than this, that the multitude have always been credulous, and the few are always artful.

The United States of America have exhibited, perhaps, the first example of governments erected on the simple principles of nature;* and if men are now sufficiently enlightened to disabuse themselves of artifice, imposture, hypocrisy, and superstition, they will consider this event as an era in their history. Although the detail of the formation of the American governments is at present little known or regarded either in Europe or in America, it may hereafter become an object of curiosity. It will never be pretended that any persons employed in that service had interviews with the gods, or were in any degree under the inspiration of Heaven, more than those at work upon ships or houses, or laboring in merchandise or agriculture; it will forever be acknowledged that these governments were contrived merely by the use of reason and the senses, as Copley painted Chatham; West, Wolf; and Trumbull, Warren and Montgomery; as Dwight, Barlow, Trumbull, and Humphries composed their verse, and

* "*Query*, whether the principles of the American governments are not rather the result of reason and judgment, than the dictates of simple nature?

"But be this as it may, it is perhaps saying rather too much, to affirm that the United States have exhibited the first example, &c., especially after the great and just encomiums on the English constitution to be found throughout this work. A constitution which the American legislator and politician professedly drew his system from." S.

It would seem as if the question of the commentator should be answered affirmatively. But this answer will impair the force of his subsequent remark. The author, in his reasoning, obviously has reference only to the *intent* of the lawgiver, which is not so clearly discernible in the slow and unequal progress of formation of the English constitution, as in the models adopted in America.

Belknap and Ramsay history; as Godfrey invented his quadrant, and Rittenhouse his planetarium; as Boylston practised inoculation, and Franklin electricity; as Paine exposed the mistakes of Raynal, and Jefferson those of Buffon, so unphilosophically borrowed from the * despicable dreams of De Pau. Neither the people, nor their conventions, committees, or sub-committees, considered legislation in any other light than as ordinary arts and sciences, only more important. Called without expectation, and compelled without previous inclination, though undoubtedly at the best period of time, both for England and America, suddenly to erect new systems of laws for their future government, they adopted the method of a wise architect, in erecting a new palace for the residence of his sovereign. They determined to consult Vitruvius, Palladio, and all other writers of reputation in the art; to examine the most celebrated buildings, whether they remain entire or in ruins; to compare these with the principles of writers; and to inquire how far both the theories and models were founded in nature, or created by fancy; and when this was done, so far as their circumstances would allow, to adopt the advantages and reject the inconveniences of all. Unembarrassed by attachments to noble families, hereditary lines and successions, or any considerations of royal blood, even the pious mystery of holy oil had no more influence than that other one of holy water. The people were universally too enlightened to be imposed on by artifice; and their leaders, or more properly followers, were men of too much honor to attempt it. Thirteen governments thus founded on the natural authority of the people alone, without a pretence of miracle or mystery, and which are destined to spread over the northern part of that whole quarter of the globe, are a great point gained in favor of the rights of mankind. The experiment is made, and has completely succeeded; it can no longer be called in question, whether authority in magistrates and obedience of citizens can be grounded on reason, morality, and the Christian religion, without the monkery of priests, or the knavery of politicians. As the writer was personally acquainted with most of the gentlemen in each of the states, who had the principal share in the first draughts, the following work was really written to lay before the public a speci-

* *Recherches Philosophiques sur les Americains.*

men of that kind of reading and reasoning which produced the American constitutions.

It is not a little surprising that all this kind of learning should have been unknown to any illustrious philosopher and statesman, and especially one who really was, what he has been often called, "a well of science." But if he could be unacquainted with it, or it could have escaped his memory, we may suppose millions in America have occasion to be reminded of it. The writer has long seen with anxiety the facility with which philosophers of greatest name have undertaken to write of American affairs, without knowing any thing of them, and have echoed and reëchoed each other's visionary language. Having neither talents, leisure, nor inclination to meet such champions in the field of literary controversy, he little thought of venturing to propose to them any questions. Circumstances, however, have lately occurred which seem to require that some notice should be taken of one of them. If the publication of these papers should contribute any thing to turn the attention of the younger gentlemen of letters in America to this kind of inquiry, it will produce an effect of some importance to their country. The subject is the most interesting that can engage the understanding or the heart; for whether the end of man, in this stage of his existence, be enjoyment, or improvement, or both, it can never be attained so well in a bad government as a good one.

The practicability or the duration of a republic, in which there is a governor, a senate, and a house of representatives, is doubted by Tacitus, though he admits the theory to be laudable: "Cunctas nationes et urbes, populus, aut priores, aut singuli, regunt. Delecta ex his et constituta reipublicæ forma, laudari facilius quam inveniri; vel, si evenit, haud diuturna esse potest."[1] Cicero asserts, "Statuo esse optime constitutam rempublicam, quæ ex tribus generibus illis, regali, optimo, et populari, modice confusa," in such peremptory terms the superiority of such a government to all other forms, that the loss of his book upon republics is much to be regretted. From a few passages that have been preserved, it is very probable he entered more largely into an examination of the composition of monarchical republics than any other ancient writer.[2] He was so far from appre-

[1] *Annales*, liber iv. c. 33.

[2] Since this was written, a considerable addition to the former fragments has

hending "disputes" from a variety of orders, that he affirms it to be the firmest bond of justice, and the strongest anchor of safety to the community. As the treble, the tenor, and the bass exist in nature, they will be heard in the concert. If they are arranged by Handel, in a skilful composition, they produce rapture the most exquisite that harmony can excite; but if they are confused together, without order, they will

"Rend with tremendous sound your ears asunder."

"Ut in fidibus aut tibiis, atque in cantu ipso, ac vocibus, concentus est quidam tenendus ex distinctis sonis, quem immutatum aut discrepantem aures eruditæ ferre non possunt; isque concentus, *ex dissimillimarum vocum moderatione, concors tamen efficitur et congruens;* sic *ex summis* et *infimis* et *interjectis ordinibus*, ut sonis, moderata ratione, civitas consensu dissimillimorum concinit; et quæ harmonia a musicis dicitur in cantu, ea est in civitate concordia arctissimum atque optimum omni in republica vinculum incolumitatis; eaque sine justitia nullo pacto esse potest." As all the ages of the world have not produced a greater statesman and philosopher united than Cicero, his authority should have great weight. His decided opinion in favor of three branches is founded on a reason that is unchangeable; the laws, which are the only possible rule, measure, and security of justice, can be sure of protection, for any course of time, in no other form of government; and the very name of a republic implies, that the property of the people should be represented in the legislature, and decide the rule of justice. "Respublica est res populi. Populus autem non omnis hominum cœtus quoquo modo congregatus, sed cœtus multitudinis juris consensu, et utilitatis communione sociatus."

"Respublica res est populi, cum bene ac juste geritur, sive ab uno rege, sive a paucis optimatibus, sive ab universo populo. Cum vero injustus est rex, quem tyrannum more græco voco; aut injusti optimates, quorum consensus factio est; aut injustus ipse populus, cui nomen usitatum nullum reperio, nisi ut etiam ipsum tyrannum appellem; non jam vitiosa, sed omnino nulla respublica est; quoniam non est res populi, cum tyrannus eam factiove capessat; nec ipse populus jam populus est si sit injus-

been made, through the industry of Angelo Mai; but, so far as it goes, it does not fulfil the conjecture here made.

tus, quoniam non est multitudo juris consensu, et utilitatis communione sociata sicut populus fuerat definitus."

"Ubi justitia vera non est, nec jus potest esse. Quod enim jure fit, profecto juste fit. Quod autem fit injuste, nec jure fieri potest. Non enim jura dicenda sunt, vel putanda, iniqua hominum constituta; cum illud etiam ipsi jus esse dicant quod de justitiæ fonte manaverit; falsumque sit, quod a quibusdam non recte sentientibus dici solet, id jus esse, quod ei, qui plus potest, utile est." According to this, a simple monarchy, if it could in reality be what it pretends to be, a government of laws, might be justly denominated a republic. A limited monarchy, therefore, especially when limited by two independent branches, an aristocratical and a democratical power in the constitution, may with strict propriety be called by that name.

If Cicero and Tacitus could revisit the earth, and learn that the English nation had reduced the great idea[1] to practice, and brought it nearly to perfection, by giving each division a power to defend itself by a negative; had found it the most solid and durable government, as well as the most free; had obtained by means of it a prosperity among civilized nations, in an enlightened age, like that of the Romans among barbarians; and that the Americans, after having enjoyed the benefits of such a constitution a century and a half, were advised by some of the greatest philosophers and politicians of the age to renounce it, and set up the governments of ancient Goths and modern Indians, — what would they say? That the Americans would be more reprehensible than the Cappadocians, if they should listen to such advice.

It would have been much to the purpose, to have inserted a more accurate investigation of the form of government of the ancient Germans and modern Indians; in both, the existence of the three divisions of power is marked with a precision that excludes all controversy. The democratical branch, especially, is so determined, that the real sovereignty resided in the body of the people, and was exercised in the assembly of king, nobles, and commons together. These institutions really col-

[1] "Id enim tenetote, quod initio dixi, nisi æquabilis hæc in civitate compensatio sit et juris et officii et muneris, ut et potestatis satis in magistratibus, et auctoritatis in principum consilio, et libertatis in populo sit, non posse hunc incommutabilem rei publicæ conservari statum." *De Republica.*

lected all authority into one centre of kings, nobles, and people. But, small as their numbers and narrow as their territories were, the consequence was confusion; each part believed it governed the whole; the chiefs thought they were sovereigns; the nobles believed the power to be in their hands; and the people flattered themselves that all depended upon them. Their purposes were well enough answered, without coming to an explanation, so long as they were few in number, and had no property; but when spread over large provinces of the Roman empire, now the great kingdoms of Europe, and grown populous and rich, they found the inconvenience of each not knowing its place. Kings, nobles, and people claimed the government in turn; and after all the turbulence, wars, and revolutions, which compose the history of Europe for so many ages, we find simple monarchies established everywhere. Whether the system will now become stationary, and last forever, by means of a few further improvements in monarchical government, we know not; or whether still further revolutions are to come. The most probable, or rather the only probable change, is the introduction of democratical branches into those governments. If the people should ever aim at more, they will defeat themselves; as they will, indeed, if they aim at this by any other than gentle means and by gradual advances, by improvements in general education, and by informing the public mind.

The systems of legislators are experiments made on human life and manners, society and government. Zoroaster, Confucius, Mithras, Odin, Thor, Mahomet, Lycurgus, Solon, Romulus, and a thousand others, may be compared to philosophers making experiments on the elements. Unhappily, political experiments cannot be made in a laboratory, nor determined in a few hours. The operation once begun, runs over whole quarters of the globe, and is not finished in many thousands of years. The experiment of Lycurgus lasted seven hundred years, but never spread beyond the limits of Laconia. The process of Solon expired in one century; that of Romulus lasted but two centuries and a half; but the Teutonic institutions, described by Cæsar and Tacitus, are the most memorable experiment, merely political, ever yet made in human affairs. They have spread all over Europe, and have lasted eighteen hundred years. They afford the strongest argument that can be imagined in support of the

position assumed in these volumes. Nothing ought to have more weight with America, to determine her judgment against mixing the authority of the one, the few, and the many, confusedly in one assembly, than the wide-spread miseries and final slavery of almost all mankind, in consequence of such an ignorant policy in the ancient Germans. What is the ingredient which in England has preserved the democratical authority? The balance, and that only. The English have, in reality, blended together the feudal institutions with those of the Greeks and Romans, and out of all have made that noble composition, which avoids the inconveniences, and retains the advantages of both.

The institutions now made in America will not wholly wear out for thousands of years. It is of the last importance, then, that they should begin right. If they set out wrong, they will never be able to return, unless it be by accident, to the right path. After having known the history of Europe, and of England in particular, it would be the height of folly to go back to the institutions of Woden and of Thor, as the Americans are advised to do. If they had been counselled to adopt a single monarchy at once, it would have been less mysterious.

Robertson, Hume, and Gibbon have given such admirable accounts of the feudal institutions and their consequences, that it would have been, perhaps, more discreet to have referred to them, without saying any thing more upon the subject. To collect together the legislation of the Indians would take up much room, but would be well worth the pains. The sovereignty is in the nation, it is true, but the three powers are strong in every tribe; and their royal and aristocratical dignities are much more generally hereditary, from the popular partiality to particular families, and the superstitious opinion that such are favorites of the God of War, than late writers upon this subject have allowed.

Grosvenor Square, January 1, 1787.

PRELIMINARY OBSERVATIONS.

THREE writers in Europe of great abilities, reputation, and learning, M. Turgot, the Abbé de Mably, and Dr. Price, have turned their attention to the constitutions of government in the United States of America, and have written and published their criticisms and advice. They all had the most amiable characters, and unquestionably the purest intentions. They all had experience in public affairs, and ample information respecting the nature of man, the necessities of society, and the science of government.

There are in the productions of all of them, among many excellent things, some sentiments, however, that it will be difficult to reconcile to reason, experience, the constitution of human nature, or to the uniform testimony of the greatest statesmen, legislators, and philosophers of all enlightened nations, ancient and modern.

M. Turgot, in his letter to Dr. Price, confesses, "that he is not satisfied with the constitutions which have hitherto been formed for the different states of America." He observes, "that by most of them the customs of England are imitated, without any particular motive. Instead of collecting all authority into one centre, that of the nation, they have established different bodies, a body of representatives, a council, and a governor, because there is in England a house of commons, a house of lords, and a king. They endeavor to balance these different powers, as if this equilibrium, which in England may be a necessary check to the enormous influence of royalty, could be of any use in republics founded upon the equality of all the citizens, and as if establishing different orders of men was not a source of divisions and disputes."

There has been, from the beginning of the revolution in America, a party in every state, who have entertained senti-

ments similar to these of M. Turgot. Two or three of them have established governments upon his principle; and, by advices from Boston, certain committees of counties have been held, and other conventions proposed in the Massachusetts, with the express purpose of deposing the governor and senate as useless and expensive branches of the constitution;* and as it is probable that the publication of M. Turgot's opinion has contributed to excite such discontents among the people, it becomes necessary to examine it, and, if it can be shown to be an error, whatever veneration the Americans very justly entertain for his memory, it is to be hoped they will not be misled by his authority.

M. Turgot is offended, because the customs of England are imitated in most of the new constitutions in America, without any particular motive. But, if we suppose English customs to be neither good nor evil in themselves, and merely indifferent; and the people, by their birth, education, and habits, were familiarly attached to them; would not this be a motive particular enough for their preservation, rather than to endanger the public tranquillity, or unanimity, by renouncing them? If those customs were wise, just, and good, and calculated to secure the liberty, property, and safety of the people, as well, or better, than any other institutions, ancient or modern, would M. Turgot have advised the nation to reject them, merely because it was at that time justly incensed against the English government? What English customs has it retained which may with any propriety be called evil? M. Turgot has instanced only one, namely, — "that a body of representatives, a council, and a governor, have been established, because there is in England a house of commons, a house of lords, and a king." It was not so much because the legislature in England consisted of three branches, that such a division of power was adopted by the states, as because their own assemblies had ever been so constituted. It was not so much from attachment by habit to such a plan of power that it was continued, as from conviction that it was founded in nature and reason.

* "Should it appear that the real object of the committees and conventions in endeavoring to depose the governor and senate is the passing of pernicious laws by the representative body, such as the abolishing or postponing the payment of debts, or the emission of an unfunded paper currency, the necessity of supporting the governor and senate will be more obvious." S.

M. Turgot seems to be of a different opinion, and is for "collecting all authority into one centre, the nation." It is easily understood how all authority may be collected into "one centre" in a despot or monarch; but how it can be done when the centre is to be the nation, is more difficult to comprehend. Before we attempt to discuss the notions of an author, we should be careful to ascertain his meaning. It will not be easy, after the most anxious research, to discover the true sense of this extraordinary passage. If, after the pains of "collecting all authority into one centre," that centre is to be the nation, we shall remain exactly where we began, and no collection of authority at all will be made. The nation will be the authority, and the authority the nation. The centre will be the circle, and the circle the centre. When a number of men, women, and children, are simply congregated together, there is no political authority among them; nor any natural authority, but that of parents over their children. To leave the women and children out of the question for the present, the men will all be equal, free, and independent of each other. Not one will have any authority over any other. The first "collection" of authority must be an unanimous agreement to form themselves into a *nation*, *people*, *community*, or *body politic*, and to be governed by the majority of suffrages or voices. But even in this case, although the authority is collected into one centre, that centre is no longer the nation, but the majority of the nation. Did M. Turgot mean that the people of Virginia, for example, half a million of souls scattered over a territory of two hundred leagues square, should stop here, and have no other authority by which to make or execute a law, or judge a cause, but by a vote of the whole people, and the decision of a majority! Where is the plain large enough to hold them; and what are the means, and how long would be the time, necessary to assemble them together?

A simple and perfect democracy never yet existed among men. If a village of half a mile square, and one hundred families, is capable of exercising all the legislative, executive, and judicial powers, in public assemblies of the whole, by unanimous votes, or by majorities, it is more than has ever yet been proved in theory or experience. In such a democracy, for the most part, the moderator would be king, the town-clerk legislator and judge, and the constable sheriff; and, upon more important

occasions, committees would be only the counsellors of both the former, and commanders of the latter.

Shall we suppose, then, that M. Turgot intended that an assembly of representatives should be chosen by the nation, and vested with all the powers of government; and that this assembly should be the centre in which all the authority was to be collected, and should be virtually deemed the nation? After long reflection, I have not been able to discover any other sense in his words, and this was probably his real meaning. To examine this system in detail may be thought as trifling an occupation as the labored reasonings of Sidney and Locke, to show the absurdity of Filmer's superstitious notions, appeared to Mr. Hume to be in his enlightened day. Yet the mistakes of great men, and even the absurdities of fools, when they countenance the prejudices of numbers of people, especially in a young country and under new governments, cannot be too fully confuted. I shall not then esteem my time misspent, in placing this idea of M. Turgot in all its lights; in considering the consequences of it; and in collecting a variety of authorities against it.

CHAPTER I.

OF MODERN DEMOCRATIC REPUBLICS.

SAN MARINO.

"A SOCIETY of gods would govern themselves democratically," says the eloquent philosopher of Geneva; who, however, would have agreed, that his "gods" must not have been the classical deities; since he knew from the highest authority, the poets, who had their information from those divinities, the Muses, that all the terrors of the nod, the arm, and the thunderbolts of Jupiter, with all the energy of his undisputed monarchy, were insufficient to hold *them* in order. As it is impossible to know what would have been his definition of the gods, we may quietly pursue our inquiry, whether it is practicable to govern *men* in this way. It would be very surprising if, among all the nations that have existed, not one has discovered a secret of so much importance. It is not necessary for us to prove that no such government has existed; it is incumbent on him who shall embrace the opinion of M. Turgot, to name the age, the country, and the people in which such an experiment has been tried. It might be easier to determine the question concerning the practicability or impracticability, the utility or inutility of a simple democracy, if we could find a number of examples of it. From the frightful pictures of a democratical city, drawn by the masterly pencils of ancient philosophers and historians, it may be conjectured that such governments existed in Greece and Italy, at least for short spaces of time; but no particular history of any one of them is come down to us; nor are we able to procure any more satisfaction to our curiosity from modern history. If such a phenomenon is at this time to be seen in the world, it is probably in some of those states which have the name of democracies, or at least in such as have preserved some share in the government to the people. Let us travel to some of those countries and examine their laws.

The republic of San Marino, in Italy, is sometimes quoted as an instance; and, therefore, it is of some importance to examine, 1. Whether, in fact, this is a simple democracy; and, 2. Whether, if it were such, it is not owing to particular circumstances, which do not belong to any other people, and prove it to be improper for any other, especially the United States of America, to attempt to imitate it.

The republic of San Marino, as Mr. Addison informs us, stands on the top of a very high and craggy mountain, generally hid among the clouds, and sometimes under snow, even when the weather is clear and warm in all the country about it.

This mountain,[1] and a few hillocks that lie scattered about the bottom of it, form the whole circuit of the dominion. They have what they call three castles, three convents, and five churches, and reckon about five thousand souls in their community.

St. Marino was its founder, a Dalmatian by birth, and by trade a mason. He was employed about thirteen hundred years ago in the reparation of Rimini, and after he had finished his work, retired to this solitary mountain, as very proper for the life of a hermit, which he led in the greatest austerities of religion. He had not been long here before he wrought a reputed miracle, which, joined with his extraordinary sanctity, gained him so great an esteem, that the princes of the country made him a present of the mountain, to dispose of it at his discretion. His reputation quickly peopled it, and gave rise to the republic which calls itself after his name. The best of its churches is dedicated to the saint, and holds his ashes. His statue stands over the high altar, with the figure of a mountain crowned with three castles in his hands, which is likewise the arms of the commonwealth. The citizens attribute to his protection the long duration of the state, and look on him as the greatest saint, next to the blessed Virgin. In their statute-book is a law against such as speak disrespectfully of him, who are to be punished in the same manner as those convicted of blasphemy. This petty republic has lasted thirteen hundred years, while all the other states of Italy have several times changed masters and forms of government.[2] Their whole history consists in two purchases of a neighboring

[1] Twenty-seven square miles.

[2] This is in substance the language of Addison.

prince, and two wars, in which they assisted the pope against a lord of Rimini.

They would probably sell their liberty as dear as they could to any that attacked them;[1] for there is but one road by which to climb up to them. All that are capable of bearing arms are exercised, and ready at a moment's call.

The sovereign power of the republic was lodged originally in what they call the *arengo*, a great council, in which every house had its representative; but, because they found too much confusion in such a multitude of statesmen, they devolved their whole authority into the hands of the council of sixty. The *arengo*, however, is still called together in cases of extraordinary importance; and if, after due summons, any member absents himself, he is to be fined. In the ordinary course of government, the council of sixty, which, notwithstanding the name, consists but of forty persons, has in its hands the administration of affairs, and is made up, half out of the noble families, and half out of the plebeian.[2] They decide all by balloting, are not admitted until five-and-twenty years old, and choose the officers of the commonwealth.

No sentence can stand that is not confirmed by two thirds of this council; no son can be admitted into it during the life of his father; nor can two be in it of the same family; nor can any enter but by election. The chief officers of the commonwealth are the two *capitaneos*, who have such a power as the old Roman

[1] History scarcely justifies this inference. In 1502, Cæsar Borgia threatened them. Sismondi says of this: —

"Les habitans, effrayés de la ruine de leur protecteur, offrirent aux Vénitiens de se donner à eux, s'ils vouloient les défendre contre César Borgia; mais les Vénitiens n'osèrent pas les accepter. Borgia, d'autre part, leur demanda seulement de recevoir un podestat de ses mains; les citoyens de San-Marino y consentirent; ils profitèrent ensuite des premières révolutions de la Romagne, pour se remettre en liberté." *Répub. Ital.* vol. xiii. p. 156.

It is true that the latest historian of San Marino attempts to question the correctness of this statement, as it would seem with little reason.

But experience has further shown their inability to resist the process of siege by famine. Through the command of the surrounding country, Cardinal Alberoni was enabled, in no long time, to place the institutions of the republic at the mercy of the Roman pontiff, Clement XII., to whose generosity the people owed their restoration.

Once more, Napoleon Bonaparte had the republic in his power, but he made it an occasion for a dramatic exhibition of generosity to free institutions, which cost little real sacrifice.

[2] The council consists of sixty persons; forty of them chosen from the township, and twenty from the country.

consuls had, but are chosen every six months. Some have been *capitaneos* six or seven times, though the office is never to be continued to the same persons twice successively. The third officer is the commissary, who judges in all civil and criminal matters; but because the many alliances, friendships, and intermarriages, as well as the personal feuds and animosities that happen among so small a people, might obstruct the course of justice, if one of their own number had the distribution of it, they have always a foreigner for this employ,[1] whom they choose for three years, and maintain out of the public stock. He must be a doctor of law, and a man of known integrity.[2] He is joined in commission with the *capitaneos*, and acts somewhat like the recorder of London under the lord mayor. The fourth man in the state is the physician. Another person, who makes no ordinary figure in the republic, is the schoolmaster. Few in the place but have some tincture of learning.[3]

"The people are esteemed very honest and rigorous in the execution of justice, and seem to enjoy more content and happiness among their rocks and snows, than the rest of the Italians do in the most fertile and inviting spots. Indeed, nothing can be a greater instance of the natural love of mankind for liberty, and of their aversion to arbitrary government, than such a savage

[1] This appears to be an error.

"Après la capitainerie, la première charge est celle du juge appelé commissaire de la république; mais elle n'est presque jamais remplie, cette judicature n'etant nécessaire que dans les cas extraordinaires, et lorsque les capitaines, soit dans la crainte d'être récusés, soit dans les momens de troubles civils, se trouvent dans l'obligation de ne pouvoir rendre eux-mêmes la justice, auquel cas on choisit un docteur étranger, qui prononce sur toutes les causes civiles et criminelles."

Mattéo Valli, quoted in Auger-Saint-Hyppolite, p. 317.

[2] The practice of sending abroad for a judge was general among the Italian republics. The Duke, in the Merchant of Venice, says, —

"Upon my power, I may dismiss this court,
Unless Bellario, a learned doctor,
Whom I have sent for to determine this,
Come here to-day.
Salario. My lord, here stays without
A messenger, with letters from the doctor,
New come from Padua."

[3] "Après le commissaire, viennent les deux juges d'appel qui revoient en seconde instance. Mais les causes peuvent encore être portées au conseil des douze, formé chaque année dans le sein du conseil-général des soixante. L'autorité de ce conseil de douze ne s'étend pas plus loin; il n'est convoqué que par les soins d'un rapporteur ou instructeur, nommé à l'effet d'examiner chaque cause, et chargé d'être arbitre dans les cas que les lois n'ont pas prévus."

Mattéo Valli

mountain, covered with people, while the Campania of Rome is almost destitute of inhabitants."

This is the account of San Marino. Yet, if all authority is here collected in one centre, that centre is not the nation. Although the original representation in the *arengo* was of houses, that is to say, of property, rather than of the persons of the citizens, and, consequently, was not very equal, since it excluded all personal property, as well as all who had no property; yet even such an agrarian, it seems, was not a sufficient check to licentiousness, and they found it necessary to institute a senate of forty men. Here, at least, commenced as complete an aristocracy as that of ancient Rome; or, to express it more exactly, as complete a separation of the aristocratical from the democratical part of the community. There are two remarkable circumstances in confirmation of this view; one is, that not only there are noble families in this *illustrissima republica Sancti Marini*, but that the constitution has limited the choice of the electors so far as to oblige them to choose one half the senate out of these nobles; the other is, that the names of the agents for the commonwealth, of the notary, and the witnesses to two instruments of purchases, made at seventy years' distance from one another, one in 1100, the other in 1170, are the same. It is not credible that they were the same persons; they were probably sons or grandsons,—which is a strong proof of the attachment to aristocratical families in this little state, and of their desire to continue the same blood and the same names in public employments, as in the case of the Oranges, Fagels, De Lyndens, &c. in Holland, and innumerable other examples in all nations.[1]

Another remarkable circumstance is, the reluctance of the citizens to attend the assembly of the *arengo*, which obliged them to make a law, compelling themselves to attend, upon a penalty. This is a defect, and a misfortune natural to every

[1] "Les capitaines sont élus tous les six mois, par scrutin secret, au nombre de douze candidats, parmi lesquels les six qui ont le plus grand nombre de suffrages sont accouplés deux à deux par la voie du sort, et inscrits sur trois bulletins. Accompagnés des capitaines encore en fonctions, du camerlingue et des conseillers, ils sont conduits dans la *piève* et devant le maître-autel ou reposent les ossemens de Saint-Marino; l'archiprêtre chante le *Te Deum*, après quoi les trois bulletins sont déposés dans une urne; un jeune enfant en tire un qu'il remet entre les mains de l'officiant; celui-ci en fait la lecture à haute et intelligible voix, et les deux citoyens ainsi désignés par le sort sont légitimement capitaines."

Mattéo Valli.

democratical constitution, and to the popular part of every mixed government. A general or too common disinclination to attend, leaves room for persons and parties more active to carry points, by faction and intrigue, which the majority, were all present, would not approve.

It is curious to see how many checks and limitations are contrived for this legislative assembly. Half nobles, half plebeians; all upwards of five-and-twenty years old; two thirds must agree; no son can sit with his father; never two of the same family.

The *capitaneos* have the executive, like the Roman consuls,[1] and the commissary has the judicial. Here, again, are remarkable limitations; the latter must be a foreigner, and he is chosen for three years. This is to give some degree of stability to the judicial power, and to make it a real and powerful check upon both the executive and legislative.

We are not, indeed, told whether the council of forty are elected annually or for life.[2] Mr. Addison may, from his well-known character, be supposed to have been more attentive to the grand and beautiful monuments of ancient arts of every kind which surrounded him in Italy, than to this rough hillock, although the form of government might have excited his curiosity, and the simplicity of manners his esteem; he has accordingly given a very imperfect sketch of its constitution and history. Yet enough appears to show incontestably that San Marino is by no means a perfect democracy. It is a mixture of monarchy, aristocracy, and democracy, as really as Sparta and Rome were, and as the Massachusetts, New York, and Maryland now are, in which the powers of the governor, senate, and assembly are more exactly ascertained and nicely balanced; but they are not more distinct than those of the *capitaneos*, council of forty, and the *arengo* are in San Marino.

Should it be argued, that a government like this, where the sovereignty resides in the whole body of the people, is a democracy; it may be answered, that the right of sovereignty in all nations is unalienable and indivisible, and does and can reside nowhere else; but, not to recur to a principle so general, the

[1] "Il arrive souvent que les deux capitaines élus sont plébeïens, tandis qu'il est impossible que deux nobles le soient, les nobles faisant leur séjour dans la ville, et l'un des deux candidats étant toujours villageois, c'est à dire habitant de la campagne." Saint-Hyppolite.

[2] They are chosen for life.

exercise, as well as the right of sovereignty, in Rome, resided in the people, but the government was not a democracy. In America, the right of sovereignty resides indisputably in the body of the people, and they have the whole property of land. There are no nobles or patricians; all are equal by law and by birth. The governors and senates, as well as representative assemblies, to whom the exercise of sovereignty is committed, are annually chosen. Governments more democratical never existed; they are vastly more so than that of San Marino. Yet the annual administration is divided into executive, legislative, and judicial powers; and the legislature itself is divided into monarchical, aristocratical, and democratical branches; and an equilibrium has been anxiously sought for in all their deliberations and actions, with infinitely more art, judgment, and skill, than appears in this little Italian commonwealth.

The liberty and the honesty of these people is not at all surprising. In so small a state, where every man personally knows every other, let the form of government be what it will, it is scarcely possible that any thing like tyranny or cruelty can take place. A king, or a decemvirate, intrusted with the government, would feel the censures of the people, and be constantly conscious of the facility of assembling the whole, and apprehensive of an exertion of their strength.

The poverty of this people appears, by the fine of one penny imposed upon absence from the *arengo;* and by the law that an ambassador should have a shilling a day. This, however, is a salary in proportion to the numbers of the people, as thirty guineas a day would be to an ambassador from the United States. It appears also probable, from the physician's being obliged to keep a horse, that there is not a carriage nor another saddle-horse in the commonwealth.

A handful of poor people, living in the simplest manner, by hard labor, upon the produce of a few cows, sheep, goats, swine, poultry, and pigeons, on a piece of rocky, snowy ground, protected from every enemy by their situation, their superstition, and even by their poverty, having no commerce nor luxury, can be no example for the commonwealth of Pennsylvania, Georgia, or Vermont,[1] in one of which there are possibly half a million of

[1] It should be recollected that these were the States inclined to adopt M. Turgot's theory.

people, and in each of the others at least thirty thousand, scattered over a large territory.

Upon the whole, a stronger proof cannot be adduced of the necessity of different orders, and of an equilibrium between them, than this commonwealth of San Marino, where there are such strong symptoms of both in a society in which there appears the least occasion for them that can be imagined to take place in any conceivable situation.[1]

BISCAY.

In a research like this, after those people in Europe who have had the skill, courage, and fortune to preserve a voice in the government, Biscay, in Spain, ought by no means to be omitted. While their neighbors have long since resigned all their pretensions into the hands of kings and priests, this extraordinary people have preserved their ancient language, genius, laws, government, and manners, without innovation, longer than any other nation of Europe. Of Celtic extraction, they once inhabited some of the finest parts of the ancient Bœtica; but their love of liberty, and unconquerable aversion to foreign servitude, made them retire, when invaded and overpowered in their ancient seats, into these mountainous countries, called by the ancients Cantabria. They were governed by counts, sent them by the kings of Oviedo and Leon, until 859, when, finding themselves without a chief, because Zeno, who commanded them, was made prisoner, they rose and took arms to resist Ordogno, son of Alfonsus III., whose domination was too severe for them. They chose for their chief one of the blood royal of Scotland, by the mother's side, and son-in-law of Zeno, their governor, who, having over-

[1] In the *Essai Historique sur la République de San Marino*, published in Paris, in 1827, by M. Auger-Saint-Hyppolite, the work already quoted, are to be found some strictures upon this sketch of the author. He says: —

"Adams n'est guères que le commentateur d'Addison, et ne connaissant San Marino que sur les notions très-superficielles données par le premier, ses raisonnemens sur les institutions San Marinoises portent sur des assertions fausses; il n'est donc pas étonnant qu'il ait regardé la petite république comme une démocratie imparfaite, puisqu'il a cru, d'aprés Addison, que le conseil ou prince était formé de façon que la moitié devait être composée de nobles."

It should be noted, that this error is found in every modern account of San Marino. But it does not appear to invalidate the position of Mr. Adams. That can scarcely be called any thing but an imperfect democracy, in which the representative body, however chosen, is chosen for life.

come Ordogno, in 870, was elected their lord; and his posterity, who bore afterwards the name of Haro, succeeded him, from father to son, until the king, Don Pedro the Cruel, having put to death those who were in possession of the lordship, reduced them to make a treaty by which they united their country, under the title of a lordship, with Castile. By this convention the King of Spain is now Lord of Biscay. It is a republic; and one of the privileges the people have most insisted on, is not to have a king. Another was, that every new lord, at his accession, should come into the country in person, with one of his legs bare, and take an oath to preserve the privileges of the lordship. The present king of Spain is the first who has been complimented with their consent, that the oath should be administered at Madrid, though the other humiliating and indecent ceremony has been long laid aside.

Their solicitude for defence has surrounded with walls all the towns in the district. These are one-and-twenty in number; the principal of which are, Orduña, Laredo, Portugalete, Durango, Bilbao, and St. Andero. Biscay is divided into nine merindades, a sort of jurisdiction like a bailiwick, besides the four cities on the coast. The capital is Bilbao. The whole is a collection of very high and very steep mountains, rugged and rocky to such a degree, that a company of men posted on one of them might defend itself as long as it could subsist, by rolling rocks on the enemy. This natural formation of the country, which has rendered the march of armies impracticable, and the daring spirit of the inhabitants, have preserved their liberty.

Active, vigilant, generous, brave, hardy, inclined to war and navigation, they have enjoyed, for two thousand years, the reputation of being the best soldiers and sailors in Spain, and even the best courtiers, many of them having, by their wit and manners, raised themselves into offices of consequence under the court of Madrid. Their valuable qualities have recommended them to the esteem of the kings of Spain, who have hitherto left them in possession of those great immunities of which they are so jealous. In 1632, indeed, the court laid a duty upon salt; the inhabitants of Bilbao rose and massacred all the officers appointed to collect it, and all the officers of the grand admiral. Three thousand troops were sent to punish them for rebellion; these they fought, and totally defeated, driving most of them

into the sea, which discouraged the court from pursuing their plan of taxation. Since that time the king has had no officer of any kind in the lordship, except his corregidor.

Many writers ascribe their flourishing commerce to their situation; but, as this is no better than that of Ferrol or Corunna, that advantage is more probably due to their liberty. In riding through this little territory, one would fancy himself in Connecticut; instead of miserable huts built of mud and covered with straw, the country appears full of large and commodious houses and barns of the farmer; the lands are well cultivated; and there is a wealthy, happy yeomanry. The roads, so dangerous and impassable in most other parts of Spain, are here very good, having been made at a vast expense of labor.

Although the government is called a democracy, we cannot here find all authority collected into one centre; there are, on the contrary, as many distinct governments as there are cities and merindades. The general government has two orders at least; the lord or governor, and the biennial parliament. Each of the thirteen subordinate divisions has its organized government, with its chief magistrate at the head of it. We may judge of the form of all of them by that of the metropolis, which calls itself, in all its laws, the noble and illustrious republic of Bilbao. This city has its alcalde, who is both governor and chief justice, its twelve regidores or counsellors, attorney-general, &c., and by all these, assembled in the consistorial palace under the titles of *conçejo, justicia, y regimiento*, the laws are made in the name of the Lord of Biscay, and confirmed by him.

These officers, it is true, are elected by the citizens, but they must by law be elected, as well as the deputies to the biennial parliament or junta general, out of a few noble families, unstained, both by the side of father and mother, by any mixture with Moors, Jews, new converts, penitentiaries of the inquisition, &c. They must be natives and residents, worth a thousand ducats, and must have no concern in commerce, manufactures, or trades; and, by a fundamental agreement among all the merindades, all their deputies to the junta general, and all their regidores, syndics, secretaries, and treasurers, must be nobles, at least knights, and such as never exercised any mechanical trades, themselves or their fathers. Thus we see the people themselves have established by law a contracted aristocracy,

under the appearance of a liberal democracy. Americans, beware!

Although we see here in the general government, and in that of every city and merindade, the three branches of power, of the one, the few, and the many; yet, if it were as democratical as it has been thought by some, we could by no means infer, from this instance of a little flock upon a few impracticable mountains, in a round form of ten leagues diameter, the utility or practicability of such a government in any other country.

The disposition to division, so apparent in all democratical governments, however tempered with aristocratical and monarchical powers, has shown itself in the breaking off from it of Guipuscoa and Alaba; and the only preservative of it from other divisions has been the fear of their neighbors. They always knew, that as soon as they should fall into factions, or attempt innovations, the court of Spain would interpose, and prescribe them a government not so much to their taste.

SWITZERLAND.

It is commonly said, that some of the cantons of Switzerland are democratical, and others aristocratical; and if these epithets are understood only to mean that one of these powers prevails in some of those republics, and the other in the rest, they are just enough; but there is neither a simple democracy, nor a simple aristocracy among them. The governments of these confederated states are very complicated, and, therefore, very difficult to be fully explained; yet the most superficial inquirer will find in all of them the clearest traces of a composition of all the three powers.

To begin with the cantons commonly reputed democratical.

DEMOCRATICAL CANTONS.

APPENZEL.

The canton of Appenzel consists of a series of valleys, scattered among inaccessible rocks and mountains, in all about

eighteen miles square.[1] The people are laborious and frugal, and have no commerce but in cattle, hides, butter, cheese, and a little linen made of their own flax. It has no walled towns, and only two or three open boroughs and a few small villages; it is, like New England, almost a continued village, covered with excellent houses of the yeomanry, built of wood, each of which has its territory of pasture-grounds, commonly ornamented with trees; neatness and convenience are studied without, and a remarkable cleanliness within. The principal part of the inhabitants have preserved the simplicity of the pastoral life. As there are not, at most, above fifty thousand souls, there cannot be more than ten thousand men capable of bearing arms. It is not at all surprising, among so much freedom, though among rocks and herds, to hear of literature, and men of letters who are an ornament to their country.

Nevertheless, this simple people, so small in number, in so narrow a territory, could not agree. After a violent contest,[2] at the time of the Reformation, in which they were in danger of a civil war, they agreed, through the mediation of the other cantons, to divide the canton into two portions, the Outer and the Inner Appenzel, or Rhodes Exterior and Rhodes Interior. Each district has now its respective chief magistrate, court of justice, police, banneret, and deputy to the general diet, although the canton has but one vote, and consequently loses its voice if the two deputies are of different opinions. The canton is divided into no less than twelve communities; six of them called the Inner Appenzel, lying to the east; and six, the Outer, to the west. They have one general sovereign council, which is composed of one hundred and forty-four persons, twelve taken from each community.

The sovereignty resides in the general assembly, which, in the Interior Rhodes, meets every year at Appenzel, the last Sunday

[1] Probably German miles, fifteen to a degree. The latest statistical works give the surface of Appenzel at two hundred and fifty-six square miles, sixty to a degree.

[2] It should be remarked that this was a religious and not a political contest. The division which ensued has ever since marked a line of separation between the inner or catholic Appenzel, and the outer, which follows the reformed faith. The mediating cantons were six; three of them, Lucerne, Schwitz, and Underwalden, for the catholics; three, Zurich, Glarus, and Schaffhausen, for the reformers.

in April; but, in the Exterior Rhodes, it assembles alternately at Trogen and at Hundwyl.[1] In the Interior Rhodes are the chiefs and officers, the *Land-Amman*, the tithing man, the governor, the treasurer, the captain of the country, the director of the buildings, the director of the churches, and the ensign. The Exterior Rhodes have ten officers, namely, — two *Land-Ammans*, two governors, two treasurers, two captains, and two ensigns. The Interior Rhodes is subdivided into six lesser ones, each of which has sixteen counsellors, among whom are always two chiefs. The grand council in the Interior Rhodes, as also the criminal jurisdiction, is composed of one hundred and twenty-eight persons, who assemble twice a year, eight days before the general assembly, and at as many other times as occasions require.[2] Moreover, they have also the little council, called the weekly council, because it meets every week in the year. The Exterior Rhodes are now divided into nineteen communities; and the sovereignty of them consists in the double grand council of the country, called the old and new council, which assembles once a year, eight days after the assembly of the country, at Trogen or at Herisaw, and is composed of ninety and odd persons. Then follows the grand council, in which, besides the ten officers, the reigning chiefs of all the communities have seats, the directors of the buildings, the chancellor, and the sautier, which make thirty-five persons; the reigning *Land-Amman* presides. After this comes the little council from before the Sitter, which is held on the first Tuesday of each month at Trogen; the reigning *Land-Amman* is the president, to whom always come in aid, alternately, an officer, with a member of council from all the thirteen communities, the chancellor of the country, and the sautier, and it consists of twenty and odd persons. The little council from behind the Sitter is held under the presidency of the reigning *Land-Amman*, whenever occasion requires;[3] it is held at Herisaw, Hundwyl, or Urnaeschen; at it assist the chancellor of the coun-

[1] This assembly consists of all the male citizens of the canton over the age of sixteen. It elects the four chiefs and the six other magistrates mentioned for the Exterior Rhodes.

In the Inner Rhodes the age of citizenship is two years later, eighteen. The officers elected serve for one year, and are reëligible.

[2] Now, three times a year, in spring and autumn, and one month before the meeting of the general assembly.

[3] Three times a year.

try and the sautier, with the counsellors of the six communities behind the Sitter, appointed for this service.[1]

Let me ask, if here are not different orders of men and balances in abundance? Such a handful of people, living by agriculture, in primitive simplicity, one would think might live very quietly, almost without any government at all; yet, instead of being capable of collecting all authority into one assembly, they seem to have been forcibly agitated by a mutual power of repulsion, which has divided them into two commonwealths, each of which has its monarchical power in a chief magistrate; its aristocratical power in two councils, one for legislation, and the other for execution; besides the two more popular assemblies. This is surely no simple democracy. Indeed, a simple democracy by representation is a contradiction in terms.[2]

UNDERWALD.

The canton of Underwald consists only of villages and boroughs, although it is twenty-five miles in length and seventeen in breadth.[3] These dimensions, it seems, were too extensive to be governed by a legislation so imperfectly combined, and nature has taught and compelled them to separate into two divisions, the one above, and the other below, a certain large forest of oaks, which runs nearly in the middle of the country, from north to south. The inferior valley, below the forest, contains four communities; and the superior, above it, six. The principal or capital is Sarnen. The sovereign is the whole county, the sovereignty residing in the general assembly, where all the males of fifteen have entry and suffrage; but each valley apart has, with respect to its interior concerns, its *Land-Amman*, its officers of administration, and its public assembly, composed

1 These observations apply to the Exterior Rhodes. The organization of the Inner Appenzel is slightly different. The little council is composed of the first magistrates and of counsellors named from each Rhode. It is divided into three sections, sitting alternately, and each section is called the weekly council. The same principle of election prevails however throughout. The general assembly is said at times to have collected as many as eight thousand men.

2 The system in substance here described, has survived all the struggles of the last century, and even the dictation of Napoleon. The profound attachment of the people to their ancient habits overcomes all opposition.

3 One hundred and seventy-nine square miles. Durand, *Statistique Elémentaire de la Suisse.*

of fifty-eight senators, taken from the communities. As to affairs without, there is a general council, formed of all the officers of administration, and of fifty-eight senators chosen in the said councils of the two valleys. Besides this there are, for justice and police, the chamber of seven and the chamber of fifteen for the upper valley, and the chamber of eleven for the lower.

Here again are arrangements more complicated, and aristocratical preferences more decided, in order to counterpoise the democratical assembly, than any to be found in America, and the *Land-Amman* is as great a man in proportion as an American governor. Is this a simple democracy? Has this little clan of graziers been able to collect all authority into one centre? Are there not three assemblies here to moderate and balance each other? And are not the executive and judicial powers separated from the legislative? Although its constitution is not by any means so well digested as ten at least of those of the United States; and although it would never be found capable of holding together a great nation, is it not a mixed government as much as any in America?[1]

GLARUS.

The canton of Glarus is a mountainous country, of eight miles long and four wide, according to native authors, perhaps intending thereby German miles; but twenty-five miles in length and eighteen in breadth, according to some English accounts. The commerce of it is in cheese, butter, cattle, linen,

[1] In 1816, this canton was regularly divided into two, each having its own form of government. The age of citizenship was advanced in both to twenty.

In the upper canton — the general assembly elects all the chief officers of the state by hand vote. It also chooses the deputy to the diet.

The council is composed of the chief officers and of sixty-five members chosen in the respective parishes, by hand vote. A father and a son cannot sit at the same time, nor two brothers.

The chief *Land-Amman* is chosen every year. The treasurer and inspector may be reëlected. Some of the chief officers, however, serve for life.

In the lower canton — the general assembly elects all the chief officers; but only two of them, the treasurer and stadtholder, require confirmation annually. Some of the officers require confirmation at the end of six years.

The legislative and executive authority is distributed in several bodies, most of which are based upon one consisting of fifty-eight members, elected in the respective communities.

The judicial power is also confided to tribunals, sometimes separate, and sometimes formed from the executive bodies.

and thread. Ten thousand cattle and four thousand sheep, pastured in summer upon the mountains, constitute their wealth.

The inhabitants live together in a general equality and most perfect harmony, even those of the different persuasions of catholics and protestants, who sometimes perform divine service in the same church, one after the other; and all the offices of state are indifferently administered by both parties, though the protestants are more in number, and superior both in industry and commerce. All the houses are built of wood, large and solid, those of the richest inhabitants differing only from those of the poorer, as they are larger.

The police is well-regulated here, as it is throughout Switzerland. Liberty does not degenerate into licentiousness. Liberty, independence, and an exemption from taxes, amply compensate for a want of the refinements of luxury. There are none so rich as to gain an ascendency by largesses. If they err in their counsels, it is an error of the judgment, and not of the heart. As there is no fear of invasion, and they have no conquests to make, their policy consists in maintaining their independence and preserving the public tranquillity. As the end of government is the greatest happiness of the greatest number, saving at the same time the stipulated rights of all, governments like these, where a large share of power is preserved by the people, deserve to be admired and imitated. It is in such governments that human nature appears in its dignity, — honest, brave, and generous.

Some writers are of opinion that Switzerland was originally peopled by a colony of Greeks. The same greatness of soul, the same spirit of independence, the same love of country, has animated both the ancients and the moderns to that determined heroism which prefers death to slavery. Their history is full of examples of victories obtained by small numbers of men over large armies. In 1388, the Austrians made an irruption into the territory of Glarus with an army of fifteen thousand men; but, instead of conquering the country as they expected, in attacking about four hundred men posted on the mountains at Naefels, they were broken by the stones rolled upon them from the summit; the Swiss, at this critical moment, rushed down upon them with such fury, as forced them to retire with an immense loss. Such will ever be the character of a people, who preserve

so large a share to themselves in their legislature, while they temper their constitution at the same time with an executive power in a chief magistrate, and an aristocratical power in a wise senate.

The government here is by no means entirely democratical. It is true, that the sovereign is the whole country, and the sovereignty resides in the general assembly, where each male of sixteen, with his sword at his side, has his seat and vote. It is true that this assembly, which is annually held in an open plain, ratifies the laws, lays taxes, enters into alliances, declares war, and makes peace.

But it has a first magistrate in a *Land-Amman*, who is the chief of the republic, and is chosen alternately from among the protestants and from among the catholics.[1] The protestant remains three years in office; the catholic two. The manner of his appointment is a mixture of election and lot. The people choose five candidates, who draw lots for the office.[2] The other great officers of state are appointed in the same manner.

There is a council called a senate, composed of the *Land-Amman*, a stadtholder, and sixty senators, forty-five protestants and fifteen catholics, all taken from fifteen tagwen or corvees, into which the three principal quarters or partitions of the country are subdivided for its more convenient government. In this senate, called the council of regency, the executive power resides.[3] Each tagwen or corvee furnishes four senators; besides the borough of Glarus, which furnishes six.[4]

[1] Each sect has its separate assembly. That of the catholics is held at Naefels. That of the protestants at Schwamden, eight days before the meeting of the general assembly.

[2] The stadtholder must, however, be named by that side to which the *Land-Amman* does not belong.

[3] Each sect has also its particular council.

[4] This would make a greater number than sixty. Some of the authorities speak of as many as eleven or twelve additional persons admitted in the same proportion as to their religious faith. The past *Land-Ammans* are also entitled to sit as members.

The council of Glarus published, in 1816, a memorial relating to the government of the canton, of which the following is an extract: —

"We have never had any constitutional form for the canton drawn up in authentic shape. The custom of successive construction, followed for centuries, and the acts of agreement established between the two religious divisions, have gradually given birth to the constitution actually in being, and which, under divine providence, we desire to transmit unchanged to our descendants."

This was followed by a very brief recapitulation of principles, which was sent to the general diet to be recorded as the constitution of Glarus.

Instead of a simple democracy, it is a mixed government, in which the monarchical power in the *Land-Amman*, stadtholder, or proconsul, the aristocratical order in the senate, and the democratical in the general assembly, are distinctly marked. It is, however, but imperfectly balanced; so much of the executive power in an aristocratical assembly would be dangerous in the highest degree in a large state and among a rich people. If this canton could extend its dominion, or greatly multiply its numbers, it would soon find the necessity of giving the executive power to the *Land-Amman*, in order to defend the people against the senate; for the senate, although it is always the reservoir of wisdom, is eternally the very focus of ambition.

ZUG.

The canton of Zug is small, but rich, and divided into mountains and plains. The sovereign is the city of Zug, and part of the country. It is divided into five quarters, which possess the sovereignty; the city of Zug is two, and the country three, Menzingen, Aegeri, and Baar. The government is very complicated, and the sovereignty resides in the general assembly of the five quarters, where each male person of sixteen years of age has admittance and a voice.[1] It assembles annually to enact laws and choose magistrates.[2] Thus these five quarters make a body of a democratical republic, which commands the rest of the canton. They furnish alternately the *Land-Amman*, the head or chief of the state, who must always reside at Zug, with the regency of the country, although he is chosen by the suffrages of all the quarters collectively. He continues three years in office, when taken from the district of Zug, and but two when chosen from any of the others.

The council of regency, to whom the general administration of affairs is intrusted, is composed of forty senators, thirteen from the city, and twenty-seven from the country.[3]

[1] The age is now nineteen.

[2] This assembly ordinarily numbers three thousand citizens.

[3] The constitution of Zug was remodelled in 1814, and some of the obnoxious features of unequal representation in the old system removed.

The canton is divided into two circles. The inner circle is composed of the

The city, moreover, has its chief, its council, and its officers apart, and every one of the other quarters has the same.

It is a total misapplication of words to call this government a simple democracy; for, although the people are accounted for something, and indeed for more than in most other free governments; in other words, although it is a free republic, it is rather a confederation of four or five republics, each of which has its monarchical, aristocratical, and democratical branches, than a simple democracy. The confederation, too, has its three branches; the general assembly, the regency of senators, and the *Land-Amman;* being different orders, tempering each other, as really as the house, council, and governor, in any of the United States of America.

URI.

The canton of Uri, the place of the birth and residence of William Tell, shook off the yoke of Austria in 1308, and, with Schwitz and Underwald, laid the foundation of the perpetual alliance of the cantons, in 1315. The canton consists only of villages and little towns or bourgades, and the whole is divided into ten genossamen, or inferior communities. It has no city.

town and community of Zug, and of the communities of Cham, Hüneberg, Steinhausen, Risch, and Walchwyl.

The outer circle consists of the communities of Aegeri, upper and lower Menzingen, Neuheim and Baar.

The cantonal, or executive council, is composed of fifty-four members, elected in the following proportion:—

Inner Circle.		*Outer Circle.*	
Zug,	11	Upper Aegeri,	5
Cham and Hüneberg,	9	Lower Aegeri,	4
Steinhausen,	2	Menzingen,	9
Risch,	2	Baar,	9
Walchwyl,	3		
	27		27

The triple or legislative council is composed of the fifty-four members of the cantonal, and one hundred and eight others, all chosen annually by their respective townships.

The *Land-Amman* is chosen for two years, alternately from each circle. He presides over both councils, there being no joint action.

The statthalter is chosen by the cantonal council for one year, and must reside in Zug.

The places of captain, banneret, and ensign are for life.

Altdorf, where the general assemblies are held, and the *Land-Amman* and regency reside, is the principal village.

The *Land-Amman* and the principal magistrates are elected in the general assembly, in which all the male persons of sixteen[1] years of age have a right to a seat and a vote.

The senate, or council of regency, in whom is vested the executive power, is composed of sixty members, taken equally from each genossamen, though they reside at the capital borough. From this council are taken all the necessary officers.[2]

There are two other councils; one called the chamber of seven, and the other the chamber of fifteen, for the management of lesser affairs.

The valley of Urseren, three leagues in length and one in breadth, marches under the banners of Uri; but it is but an ally, connected by treaty in 1410. It has its proper *Land-Amman* and council, and has also a bailiwick subject to it.

The village of Gersaw is a league in breadth, and two in length; there are about a thousand inhabitants. This is the smallest republic in Europe; it has, however, its *Land-Amman*, its council of regency, and its general assembly of burgesses, its courts of justice and militia, although it is said there is not a single horse in the whole empire. Such a diminutive republic, in an obscure corner, and unknown, is interesting to Americans, not only because every spot of earth on which civil liberty flourishes deserves their esteem; but, particularly, because it shows the impossibility of erecting even the smallest government, among the poorest people, without different orders, councils, and balances.

SCHWITZ.

The canton of Schwitz has the honor of giving the name to the whole confederation, because the first battle for independency was fought there; yet it consists only of villages divided into six quarters, the first of which is Schwitz, where the ordinary regency of the country resides. The sovereign is the whole

[1] Now twenty years.

[2] The district of Uri has ten communities; that of Urseren has one. Each of these chooses four members to the council, which is composed besides of the chief officers elected by the general assembly.

country; that is to say, the sovereignty resides in the general assembly of the country, where all the males of sixteen years of age have a right of entry and suffrage.

Yet they have their *Land-Amman*,[1] and their ordinary regency, at which the *Land-Amman* presides, composed of sixty counsellors, taken equally[2] from the six districts. All the necessary officers are taken from this council.

There are, besides, the secret chamber, the chamber of seven, and the chamber of nine, for finance, justice, and police.

THE GRISONS.

In the republic of the three leagues of the Grisons, the sovereign is all the people of a great part of the ancient Rhetia. This is called a democratical republic of three leagues. 1. The league of the Grisons. 2. The league Caddee.[3] 3. The league of Ten Jurisdictions. These three are united by the perpetual confederation of 1472, which has been several times renewed. The government resides sovereignly in the communities, where every thing is decided by the plurality of voices. These elect and instruct their deputies for the general diet, which is held once a year. Each league elects also its chief or president, who presides at the diets, each one in his league. The general diet assembles one year at Ilanz, in the league of the Grisons; one year at Coire, in the league Caddee; and one year at Davos, in the league of Ten Jurisdictions. There is another ordinary assembly, composed of chiefs, and of three deputies from each league, which is held at Coire, in the month of January. Besides these regular assemblies, they hold congresses whenever the necessities of the state require them; sometimes of the chiefs alone; sometimes of certain deputies from each league, according to the importance of the case. These assemblies are held at Coire. The three leagues form but one body in general affairs; and,

[1] And statthalter, elected biennially by the general assembly, by show of hands.

[2] The sixty counsellors are chosen from the district of Schwitz alone. The five other districts send thirty more; and these, with the chief officers chosen by the general assembly, are called the council.

There is another body, called the triple council, of two hundred and seventy members, with the chief officers. It assembles twice a year, and its duties are confined to the business of the federal diet.

[3] *Casa Dei*, God's house.

although one league has more deputies than another, they count the voices without distinction of leagues.[1] They conduct separately their particular affairs. Their country is thirty-five leagues in length and thirty in breadth.

Even in this happy country, where there is more equality than in almost any other, there are noble families, who, although they live like their neighbors by the cultivation of the earth, and think it no disgrace, are very proud of the immense antiquity of their descent, and boast of it, and value themselves upon it as much as Julius Cæsar did, who was descended from a goddess.[2]

[1] The grand council is now composed of sixty-five members, chosen for a year. An executive council, of three persons, is chosen by the grand council, one from the people at large of each league. These can serve but two years successively.

"The supreme authority is not absolutely and finally vested in the diet, but in the communities at large; for, in all affairs of importance, such as declaring war, making peace, and imposing taxes, the deputies either bring positive instructions from their constituents, or refer those points, concerning which they have no instructions, to the decision of the several communities; so that, in effect, the supreme power constitutionally resides in the body of the people, and not in their representatives at the diet." Coxe, *Switzerland*, iii. p. 227.

[2] "Corruption and influence are not in any national parliament more conspicuous than in the diet of the Grisons. For although, in general, those deputies, annually chosen by every male of a stated age, are subject to be controlled in their votes by written orders from their constituents, yet they frequently contrive to elude this restriction. Sometimes the instructions are drawn up, with the consent of the community, under the sole direction of the deputy himself; at other times, an exemption from positive instructions, and the power of voting at his own pleasure, is purchased by the deputy from his constituents. Sometimes, again, the deputy, although he may not have interest sufficient to gain either of these points, has still sufficient address to get his instructions so obscurely worded as to admit a doubtful interpretation.

"By various intrigues of this kind, the greatest part of the deputies ultimately acquire the power of voting as they please; and, as they chiefly obtain this power by corrupting their constituents, most of them, in return, sell their vote to the leading members of the diet. For most questions are carried, and most causes decided by bribery." Coxe, iii. pp. 231 – 2.

"The corruption which prevailed in this Grison confederacy is known to have been great and universal. Ever since the treaty of Milan, in 1639, the influence of Austria was predominant in all its concerns."

Brougham, *Political Philosophy*, pt. iii. p. 393.

"In treating of the democratical cantons in Switzerland, it is asserted, that their governments, and in particular that of Glarus, are not entirely democratical; for, though the sovereign is the whole country, and the sovereignty resides in the general assembly, yet it is a mixed government, in which the *Land-Amman*, statthalter or proconsul, the aristocratical order in the senate, and the democratical in the general assembly, are distinctly marked.

"To this it may be observed that, if these governments are mixed, the sovereignty is not so; and it is from the formation or constitution of the sovereignty that one judges of the nature of a society, and classes it as monarchical, aristocratical, democratical, or mixed. The *Land-Amman*, statthalter, proconsul,

THE UNITED PROVINCES OF THE LOW COUNTRIES.

THERE are in Friesland and Overyssell, and perhaps in the city of Dort, certain remnants of democratical powers, the fragments of an ancient edifice, which may possibly be reërected;

or senate, is no part of the sovereignty in any of the Swiss cantons. They are not properly called the government, but are rather the administrators of government in the executive and judicial departments. Their powers are derived from the democratical part, and are subordinate to that part which is the sovereign alone, without any mixture, it should seem, of monarchy or aristocracy; as neither the *Land-Amman*, statthalter, proconsul, or senate has any share in the making of the laws, imposing of taxes, forming of alliances, declaring war, or making of peace, which powers are vested in the democracy alone, and constitute the sovereign of the state.

"The officers in these governments and the senate (which acts merely officially and ministerially) are no checks to the assembly of the people; but, on the contrary, are obliged to comply with and obey the democratic will expressed therein, as much as the bailiff or constable is obliged to do, and make no more a part of the sovereignty than does the lowest officer.

"If the various councils, committees, corporations, and officers, established for the public, or any particular service in subordinancy to the sovereign, are considered as checks to, or making a part of it, there is no such government in the world as pure monarchy, aristocracy, or democracy, for there are councils, committees, &c. in all of them.

"Should, however, some of the Swiss cantons, particularly that of Glarus, be perfectly democratical, they are by no means models for the citizens of America. The forms of government which might maintain the peace and promote the happiness of those small districts, would be ineffectual to promote the happiness of the citizens of the United States, the extent of whose country, their temper, disposition to each other, eagerness for unlimited commerce, &c. require a different system.

"If the reflections on what regards the supreme power of sovereignty are well founded, they are applicable to several parts of this publication." S.

The remarks of the commentator are acute; but they seem hardly to do justice to the meaning, much less to confute the reasoning of the author. He assumes, as a basis, a proposition wholly at variance with that adopted at the outset of this work, and which would change the classification made of forms of government. It is not, and cannot be, from the mere *formation* of the sovereignty that a judgment can be made of the nature of a system; inasmuch as such a rule would resolve all governments derived from the popular will into simple democracies, no matter how much the powers may have been distributed. It moreover leaves no room for those mixed forms, in which many of the ancients and moderns perceive the greatest probability of duration and success.

The author, in his preliminary observations, takes a different point of departure. He assumes, as a rule of judging the nature of a government, the extent to which the sovereign power is exclusively reserved or generally distributed. Thus, his idea of a pure democracy is the sway of numbers acting directly upon every subject involving the common interest of a community. This is the only case in which the sovereignty is completely reserved to the people. Such a simple democracy he maintains to be impracticable; and, further, he denies that it can ever have existed.

As a consequence, the next step in his chain of reasoning, and one which his commentator appears to overlook, is, that the devolution of power to any man

but as there is nothing which favors M. Turgot's idea, I shall pass over this country for the present.

or body of men, having a recognized, independent, continuous existence for any period of time, is inconsistent with the idea of a simple democracy. "A simple democracy by representation," he says, "is a contradiction in terms." The same idea is more fully developed in the tenth number of the Federalist, written by Mr. Madison. It is laid down just as broadly by Filangieri: —

"Ma io demanderei a Polibio, che cosa intendera egli sotto il nome di democrazia semplice. Forse quella, nella quale il popolo è nel tempo istesso legislatore, magistrato, senato, giudice, condottiero dell' esercito in tempo di guerra? Se questa era secondo lui una semplice democratia, l'esistensa di questa specie di governo è un imposibile politico."

Power may, however, be distributed in two separate forms; one, that of mere delegation, where all discretion is reserved from the agent employed to do certain specific and commanded acts; the other, that of representation, in which a general trust is conferred to act for the best interests of those represented. It is the presence of the last form which makes the characteristic feature of a republic. In the United States much confusion of ideas prevails on this subject, which is the origin of a good deal of the party violence of the times. The true distinction is generally well laid down in the sixth chapter of the third part of Lord Brougham's *Political Philosophy*, page 33.

It only remains in this connection to test the argument of the commentator by an appeal to the constitution of Glarus, upon which he rests for support. It appears that the general assembly or body of the people, in which the sovereignty resides, ordinarily meets only once a year. On the other hand, it elects the *Amman*, or chief executive magistrate, but twice in five years. Here is a clear grant of power for a long term. Next comes the senate or council, chosen annually, but not in the general assembly. The members represent the several smaller communities, organized upon a distribution of power differing from that centered in the mass. They exercise all the usual legislative, with some executive and judicial powers, subject, however, to a single restriction. Every law passed must be submitted for ratification to the general assembly. None can be proposed to the latter body, which has not been subjected to the ordeal of the senate at least a month beforehand, and upon which the sense of that body has not been taken. From all which, it is plain that great trusts, beyond that of mere agency, are necessarily created, subject only to the supervision of the people in their annual assembly. These must, in practice, materially limit the exercise of their sovereignty.

It would seem, then, to be clear, that the single fact of the democratic origin of power distributed in any form of government does not invalidate the position of the author, which excepts it from the scope of his definition of a simple democracy, where power is never supposed to go out of its hands. In truth, if a judgment were to be made of forms solely from their outward show, the most complete democracy among the Swiss republics would not seem to be Glarus. The reduction of power to its first elements, the township or local community, is carried further in the Grisons than anywhere else. The principle of representation is not acknowledged; inasmuch as every delegate to the diet is denied the right of exercising the smallest discretion, and is bound to act in every instance as the instructed agent of his employers. The age at which men vote is regulated in each community. In many it is fixed at fourteen years. The diet is a federal, rather than a representative assembly, in which the chief of each of the three leagues forming the confederacy presides in his turn. And these three chiefs, in conjunction with a commission of nine persons, equally selected from each league, constitute all of the executive power established.

There is nothing in appearance so democratic as this in any form adopted in

the United States. Yet it is admitted that the practical working of the system is somewhat aristocratic. From whence it may be observed, that those who look at the mere theory of any government, without paying close attention to the modes of thought, the feelings, the manners, and the customs of a community, which do much the most to determine its character, will always be liable to commit great mistakes. Thus it is with the present instance in another remarkable particular. The strict jealousy of all delegated power shown among the Grisons would at first sight appear likely to secure the greatest degree of purity in all their agents. The fact is notorious, nevertheless, that the system is one of the most corrupt ever established. In some cases, the delegate has been known to buy his post, by a regular and specified payment of money to every voter. He, in his turn, sells his vote to some leading person at home, or to a government abroad. In this way, the Austrian government has heretofore exercised great sway over the canton, and directed its policy. The administration of justice, unfortunately, partakes of the corruption thus established in politics. Such an example would seem to furnish new arguments in support of the author's theory of the necessity of balancing powers.

CHAPTER II.

ARISTOCRATIC REPUBLICS.

THE CANTON OF BERN.

It is scarcely possible to believe that M. Turgot, by collecting all authority into one centre, could have intended an aristocratical assembly. He must have meant, however, a simple form of government of some kind or other; and there are but three kinds of simple forms, democracy, aristocracy, and monarchy. As we have gone through most, if not all, the governments in Europe in which the people have any share, it will throw much light upon our subject if we proceed to the aristocracies and oligarchies; for we shall find all these under a necessity of establishing orders, checks, and balances, as much as the democracies. "As the people have been always necessitated to establish monarchical and aristocratical powers, to check themselves from rushing into anarchy, so have aristocratical bodies ever been obliged to contrive a number of divisions of their powers to check themselves from running into oligarchy."

The canton of Bern has no other sovereign than the single city of Bern. The sovereignty resides in the grand council, which has the legislative power and the power of making peace, war, and alliances, and is composed of two hundred counsellors and ninety-nine assessors, the election of whom is made, by the seizeniers and the senate, from the citizens, from whom they are supposed virtually to derive their power; but a general assembly of the citizens is never called together, on any occasion, or for any purpose, not even to lay taxes, nor to make alliances or war. To be eligible into the grand council, one must be a citizen of Bern, member of one of the societies or tribes, and at least in the thirtieth year of his age.

The executive power is delegated by the grand council to the senate or little council, which is composed of twenty-seven per-

sons, including the two avoyers or chiefs of the republic, the two treasurers of the German country and of the Pays de Vaud, and the four bannerets or commanders of the militia, taken from the first four tribes, for the four districts of the city.[1] Vacancies in this senate are filled up by a complicated mixture of ballot and lot; twenty-six balls, three of which are gold, are drawn out of a box by the several senators; those who draw the golden ones nominate three electors out of the little council; in the same manner, seven members are designated from the grand council, who nominate seven electors from their body; these ten nominate ten candidates to be voted for in the grand council; the four of these who have the most votes, draw each of them a ball out of a box, which has in it two of gold and two of silver; the two who draw the gold are voted for in the grand council, and he who has the most votes is chosen, provided he be married, and has been ten years in the grand council.

Vacancies in the grand council are filled up at certain periods of about ten years, and two new members are appointed by each avoyer, one by each seizenier and senator, and two or three others by other officers of state; if there are more vacancies, they are filled by the election of the seizeniers and senators.

The seizeniers, who have this elective power, are drawn by lot from among those members of the grand council who have held the office of bailiffs, and who have finished the term of their administration. The bannerets and seizeniers have, by the constitution, an authority, for three days in Easter, resembling that of the censors in ancient Rome, and may deprive any member of either council of his place; but, as their sentence must be confirmed by the great council, they never exercise their power. There are six noble families at Bern, who enjoy the precedence of all the other senators although more ancient members, and have rank immediately after the bannerets.

The principal magistrates are, the two avoyers, who hold their offices for life; the two treasurers, who continue for six years; and the four bannerets, who remain only four. The avoyers

[1] The senate is now elected by the grand council, and is subject to annual confirmation.

The members of the great council are also subject to annual confirmation.

The operation of this is to make the will of the majority of the latter body almost absolute.

officiate alternately a year; and the reigning avoyer, although he presides in council, in an elevated seat under a canopy, and has the public seal before him, has no vote, except in cases of equal divisions, and never gives his opinion unless it is required. The avoyer, out of office, is the first senator and president of the secret council.

The secret council is composed of the avoyer out of office, the four bannerets, the two treasurers, and two other secret counsellors taken from the senate. In this body all affairs that require secrecy, — and some of these are of great importance, — are debated and determined.

The grand council assembles and deliberates by its own authority at stated times, and superintends all affairs, although the most important are delegated generally to the senate. The whole administration is celebrated for its uncommon moderation, precision, and despatch.[1]

There are seventy-two bailiwicks, distributed in four classes,

[1] The government of Bern, though extremely aristocratic in its character, seems until lately to have been satisfactory to the great mass of the people. The doctrines of the French revolution excited little sympathy, and the invasion which followed was resisted by the whole nation, although feebly seconded by the government itself. The old system was overturned by the French power, which imposed upon the people a new one. The people of Switzerland were *ordered* by General Brune, at the head of thirty thousand French troops, to enjoy a free government, "one and indivisible." It was not until after the general settlement of Europe, in 1816, that any part of the old form was permanently reëstablished. Certain modifications were then introduced, all of them of a popular character, without materially changing the nature of the government. Yet, as they serve to show the progress of liberal principles, it may not be without use to point them out.

The right of citizenship in the town, carrying with it eligibility to the grand council, is opened to the citizens of the country.

The country is admitted to a share of the administration, being entitled to ninety-nine members of the grand council, the city retaining two hundred.

Of these ninety-nine members, the towns have the right of choosing seventeen. The election is made by the magistrates, and not by the people.

The country districts have the right of choosing seventy more. The election is made by electoral colleges, especially organized for the purpose, but not distinctly provided for in the constitution.

The remaining twelve are chosen by the grand council itself, on the nomination of the little council and the committee of sixteen. The motive assigned for this reservation is, "to equalize any disproportion of representation which may happen from the preceding division, as well as to consider persons who, either in public employments, in high military posts, or in scientific pursuits, may have distinguished themselves, and deserved well of their country."

The two hundred members of the city are chosen by the little council and a committee of sixteen taken from the larger body. This smaller body forms a list of candidates over the age of twenty-five. At each vacancy, the eldest on this

comprehending a country of sixty leagues in length, or a third part of all Switzerland, subject to this city. The bailiffs are appointed by lot from the grand council. They were formerly chosen, but this method, rendering all the members dependent upon a few, who had the most influence, had too strong a tendency to an oligarchy. The bailiwicks are the most profitable places, and are filled from the grand council. The bailiffs live in much splendor, and are able to lay up two or three thousand pounds sterling a year, besides discharging all their expenses. They represent the sovereign authority, put the laws in execution, collect the revenues, and act as judges in civil and criminal causes. An appeal lies to Bern, in civil causes to the courts of justice, and in criminal to the senate; but as the judges on appeal are persons who either have been or expect to be bailiffs, there is great reason to be apprehensive of partiality.

There is no standing army, but every male of sixteen is enrolled in the militia, and obliged to provide himself a uniform, a musket, powder, and ball; and no peasant is allowed to marry without producing his arms and uniform. The arms are inspected every year, and the men exercised. There are arsenals of arms at Bern, and in every bailiwick, sufficient for the militia of the district, and a sum of money for three months' pay. The dragoons are chosen from the substantial farmers, who are obliged to provide their own horses and accoutrements. There is a council of war, of which the avoyer out of place is president in peace; in war, a general is appointed to command all the forces of the state.

There is a political seminary for the youth, called the exterior state, which is a miniature of the whole government. The young men assemble and go through all the forms; they have their grand council, senate, avoyers, treasurers, bannerets, seizeniers, &c.; the post of avoyer is sought with great assiduity. They debate upon political subjects, and thus improve their

list is admitted. The qualifications are, — that he be over twenty-nine years of age, of good character, possessed of a certain amount of property, or have served the country five years.

In the course of the violent convulsions of the last century, the territory of Bern has undergone some change. It lost the northern part, which was joined to the canton of Aargau, and the southwestern part, or the Pays de Vaud, has been made into a new canton of that name. On the other hand, by the decree of the Congress of Vienna, a large part of the former bishopric of Basle was annexed to it, with the city and territory of Bienne.

talents by exercise, and become more capable of serving the public in future life.[1]

The nobility in this country are haughty, and much averse to mixing in company, or any familiar conversation with the common people; the commons are taught to believe the nobles superiors, whose right it is to rule; and they believe their teachers, and are very willing to be governed.

FRIBOURG.

The canton of Fribourg is aristocratical, not having more than forty families who can have any part in the government. These all live very nobly; that is to say, without commerce, manufactures, or trades.

The sovereignty and legislative authority reside in the council of two hundred persons, composed of the two avoyers, who are for life; twenty-two counsellors; four bannerets; sixty other counsellors, from whom the twenty-four who compose the senate, in which resides the executive power, are taken when they are to be replaced; and one hundred and twelve others, whom they call the grand senate of two hundred.

The two avoyers are elected by the plurality of suffrages of all the citizens. They hold their offices for life, and preside alternately a year. The twenty-two counsellors are also for life, and are designated by lot, as well as the bannerets, whose charges continue but three years. The sixty also are nominated by lot, and are drawn from the hundred and twelve, called the two hundred. These last come forward in the state by the presentation and nomination of the secret chamber, composed of twenty-four, besides the bannerets, who are the chiefs of it. This chamber, which is sovereign, besides the right of nomination to the state, has alone that of correction and of proposing regulations.

The two avoyers, the twenty-two counsellors, and the four

[1] A Berne, il y a un exercice bien singulier pour les jeunes patriciens qui sortent du collége. C'est ce qu'on appelle l'état extérieur. C'est une copie en petit de tout ce qui compose le gouvernement de la république. Un sénat, des avoyers, des officiers, des huissiers, des orateurs, des causes, des jugemens, des solemnités. L'état extérieur a même un petit gouvernement et quelques rentes, et cette institution, autorisée et protégée par le souverain, est la pepinière des hommes d'état qui dirigeront un jour les affaires publiques dans les mêmes emplois qu'ils n'exercent d'abord que par jeu." Rousseau, *Considérations sur le Gouvernement de Pologne.*

bannerets, form the little senate, which hears and determines civil causes, and assembles every day.

The affairs of state are carried before the grand senate of two hundred.

The tribes are corporations of tradesmen, who have no part in government, and who assemble in the abbays, only for the affairs of their occupations, and all their statutes are approved or rejected by the senate.

There are thirty-one bailiwicks subject to this canton. The method of determining the members of the little senate and secret council is another check. The names of the candidates in nomination are placed in a box, containing as many partitions as there are persons; the ballots are thrown into this box by the electors, without knowing how the names are placed; and the candidate whose name occupies the division, which receives by accident the most ballots, has the lot. This is to guard against the influence of families; for, among those few families from which alone any candidate can be taken, some have more influence than others. The canton contains sixty-six thousand souls. Its land produces good pasture, some corn, and little wine; it has no commerce, and not much literature. It has more troops in foreign service than any other canton in proportion. As the rivers and lakes have a direct communication with the sea, they might have a valuable commerce; but as none of the persons concerned in government can be merchants, no commerce can ever be in fashion, except that of their noble blood to foreign sovereigns. It is no doubt much to the honor of their fidelity and valor to be chosen so generally to be the life-guards of princes; but whether they can vindicate such a traffic upon principles of justice, humanity, or policy, from the imputation of a more mercenary spirit than that of ordinary commerce, is for them to consider. The conservation of the oligarchy, however, is entirely owing to this custom; for a youthful, fiery nobility, at home in idleness, would necessarily become ambitious of popularity, and either procure, by intrigues and insurrections, a greater share of importance to the people, or set up one of the greatest genius and enterprise among them for a despot. In foreign service they exhaust their restless years, and return, after the death of their fathers, fatigued with dissipation, to enjoy their honors and estates; to support those laws which are so

partial to their wishes; and to reassume the manly simplicity of manners of their native country.

SOLEURE.

The canton of Soleure, seven leagues in breadth and twelve in length, contains fifty thousand souls, and the patrician families are in quiet possession of all the public offices. The sovereign is the city of Soleure; and the sovereignty resides in the grand council, consisting of two avoyers, who preside alternately, and whose election depends upon the council, and all the citizens in general, who are divided into eleven tribes; of twenty-three of the thirty-three senators taken from the tribes, each of which furnishes three; and of sixty-six members who represent the citizens, and are taken also from the tribes in equal numbers, namely, six from each tribe.[1]

The senate is composed of the two avoyers, and the thirty-three senators taken from the tribes, making thirty-five in all, who are called the little council, conduct the affairs of state, and judge causes, civil and criminal. The two councils make together the number of one hundred, without computing the avoyer in office, who presides in chief. This body, named the grand council, makes laws and statutes; treats of alliances, peace, and war; decides appeals in the last resort; elects the treasurer, the fourth in rank in the estate, and the exterior bailiffs. The thirty-three senators consist of eleven alt-raths or senior

[1] The constitution of Soleure has undergone some change since this was written.

The grand council, or legislative body, chooses its own members, thirty-five out of the one hundred and one directly; of whom twenty-four must represent the city, and eleven for the country.

The remaining sixty-six are to be selected from a list of candidates, treble the number to be chosen, presented by an electoral college of fifteen, organized by lot for the purpose, in each of the respective tribes or districts to which the representation is apportioned.

The little council, or executive body, consists of twenty-one members, chosen from the larger body, and containing a part of it. One member must be taken for each of the eleven tribes of the city, four from the country, and the rest at large.

At intervals of eight years, a body of fifteen members is constituted by lot to decide the question, whether a new election of the little council shall take place. If a majority decide in the affirmative, their decision is then submitted to the grand council; and if two thirds of that assembly approve, they then proceed to a new election.

counsellors, and twenty-two junk-raths or juniors. Upon the removal, by death, of one of the alt-raths, the eldest of the junk-raths succeeds him, and this vacancy is filled out of the great council, by election of the eleven alt-raths. From among the alt-raths, the two avoyers, the banneret, and the treasurer, the four principal magistrates of the commonwealth, are chosen; and on the death of an avoyer, the banneret succeeds to his place, after having gone through the formality of a nomination by the general assembly of citizens. Vacancies in the grand council are supplied by the alt-raths, from the same tribe to which the deceased member belonged. There is an annual meeting of the whole body of the citizens, in which the avoyers and banneret are confirmed in their places; the senior and junior counsellors, at the same time, mutually confirm each other.[1] All these confirmations are matters of course, and mere form. All other public employments are disposed of by the senate.

The revenues of the public and salaries of officers are very considerable, and afford the few distinguished families very profitable emoluments. The grand sautier is annually elected by all the citizens. There are several tribunals and chambers,—the secret council, formed of the two avoyers, the banneret, the treasurer, the most ancient of the senators of the first order, or alt-raths, the secretary of state, and attorney-general; the council of war; the council of justice, which is composed of six members of the little council, and eleven members of the grand council, one of whom is furnished by each tribe; the grand sautier presides in it, instead of the avoyer in office; the consistory and the chamber of orphans. This canton has a large country subject to it, comprehending eleven bailiwicks.

The soil is extremely fertile; yet there is a want of hands for agriculture, and population decreases; although commodiously situated for commerce, they have none. These circumstances are enough to show the blessings of a government by a few noble families. They show another thing, still more curious, to

[1] The most important change made in the government is found in the abolition of all distinctions between the old and new burghers, and in the extension of the mutual privilege of gaining citizenship among the respective tribes in city and country.

The qualifications for election to the council are, that a man be twenty-four years of age; that he be dependent on no one for wages or bread; that he have a certain amount of property; and that he be a native or a citizen of ten years' standing.

wit, — the consequence of mixing the nobles and commons together. The latter have been led to reduce their own constitutional share in the government to a mere form, and complaisantly to resign all the substance into the hands of those whom they think their natural superiors; and this will eternally happen, sooner or later, in every country in any degree considerable for extent, numbers, or wealth, where the whole legislative and executive power are in one assembly, or even in two, if they have not a third power to balance them.

Let us by no means omit, that there is a grand arsenal at Soleure, as there is at Bern, well stored with arms, in proportion to the number of inhabitants in the canton, and ornamented with the trophies of the valor of their ancestors.

Nor should it be forgotten, that a defensive alliance has subsisted between France and several of these cantons for more than a century, to the great advantage of both. These republicans have found in that monarchy a steady, faithful, and generous friend. In 1777, the alliance was renewed in this city of Soleure, where the French ambassador resides, and extended to all the cantons. In the former treaty an article was inserted, that, if any dissensions should arise between the cantons, his majesty should, at the request of one of the parties, interpose his mediation, by all gentle means, to bring about a reconciliation; but if these should fail, he should compel the aggressor to fulfil the treaties between the cantons and their allies. As this article was manifestly incompatible with that independence which republicans ought to value above all things, it has been wisely omitted in the new treaty; and it would have become the dignity of the Swiss character to have renounced equally those pensions, which are called *Argents de Paix et d'Alliance*, as inconsistent, not only with a republican spirit, but with that equality which ought to be the foundation of an alliance.

LUCERNE.

The canton of Lucerne comprehends a country of sixteen leagues long and eight wide, containing fifteen bailiwicks, besides several cities, abbeys, monasteries, signories, &c. The inhabitants are almost wholly engaged in agriculture and the exportation of their produce. Their commerce might be greatly aug-

mented, as the river Reuss issues from the lake, passes through the town, and falls into the Rhine.

The city contains less than three thousand souls, has no manufactures, little trade, and no encouragement for learning; yet the sovereign is this single city, and the sovereignty resides in the little and great council, having for chiefs two avoyers, who are alternately regents. There are five hundred citizens in the town, from whom a council of one hundred are chosen, who are nominally the sovereignty; out of this body are formed the two divisions, the little council, senate, or council of state, consisting of thirty-six members, divided into two equal parts, of eighteen each, one of which makes choice of the other every half year. The whole power is actually exercised by this body, the two divisions of which administer the government by turns. They are subject to no control; are neither confirmed by the sovereign council nor by the citizens; the division which retires confirming that which comes in. As the vacancies in the senate are filled up by themselves, all power is in possession of a few patrician families. The son succeeds the father, and the brother his brother.

The grand council consists of sixty-four persons, taken from the citizens, who are said to have their privileges; but it is hard to guess what they are, as the elections are made by the little and great council conjointly.[1]

The administration, the police, the finances, and the whole executive power is in the senate, which is constantly sitting.

[1] The government of Lucerne has undergone changes, although none which materially alter the principle at its foundation. The most important is the extension of the right of election of members of the great council of one hundred, so that fifty are taken from the burghers of the city, and fifty from the country. Of these, thirty-one are chosen by the citizens of the respective towns or districts to which they are apportioned; the remaining sixty-nine are chosen by the council itself. They hold their places for life.

The smaller or daily council is composed of thirty-six members, at least ten of them from the country. They nominate persons to fill their own vacancies from members of the grand council, which nominations are confirmed by the latter body. They form a part of the greater council.

This daily council, with the two avoyers, constitute the acting body; but all laws prepared by it must be submitted to the larger body for ratification.

All elections are by ballot, and an absolute majority is necessary to make a choice.

The qualifications of voters are, that they be twenty years of age; have a small property; have suffered no infamous punishment; have made no insolvency injurious to creditors.

The grand council is assembled only upon particular occasions, for the purpose of legislation. The senate has cognizance of criminal causes; but in capital cases, the grand council is convoked to pronounce sentence; in civil causes an appeal lies from the senate to the grand council; but these appeals can be but mere forms, the same senators being in both courts.

As the senate constitutes above a third of the grand council, chooses its own members, confers all employments, has the nomination to ecclesiastical benefices, and two thirds of the revenues of the canton belonging to the clergy, its influence must be uncontrollable.[1]

The two avoyers are chosen from the senate by the council of one hundred, and are confirmed annually. The relations of the candidates are excluded from voting; but all such checks against influence and family connections in an oligarchy are futile, as all laws are ciphers. There are also certain chambers of justice and police.

In some few instances, such as declaring war and making peace, forming alliances, or imposing taxes, the citizens must be assembled and give their consent, which is one check upon the power of the nobles.

ZURICH.

The canton of Zurich contains one hundred and fifty thousand souls, upon an area of forty miles by thirty, and abounds in corn, wine, and all the ordinary productions of excellent pastures. Literature has been encouraged, and has constantly flourished in this country from the time of Zuinglius to that of Gesner and Lavater. The inhabitants are industrious, their manufactures considerable, and their commerce extensive.

In the city is a public granary, an admirable resource against scarcity; and a magnificent arsenal, well filled with cannon, arms, and ammunition, particularly muskets for thirty thousand men, the armor of the old Swiss warriors, and the bow and

[1] The qualifications for the grand council are, over and above the preceding, the age of twenty-five; and, in default of the requisite property, some valuable service to the state.

A father and son, or two brothers, cannot be members of the daily council at the same time.

arrow with which William Tell shot the apple on the head of his son:

"Who with the generous rustics sate,
On Uri's rocks, in close divan,
And winged that arrow, sure as fate,
Which ascertained the sacred rights of man."

The sovereign is the city of Zurich. The sovereignty resides in the two burgomasters, in the little council, composed of forty-eight members, and the grand council, composed of one hundred and sixty-two members; all taken from thirteen tribes, one of which is of the nobles, and the other twelve of citizens.

Although there are twelve thousand souls in the capital, and one hundred and fifty in the canton, there are not more than two thousand citizens. In early times, when the city had no territory round it, or a small one, the citizens were in possession of the government; when they afterwards made additions, by conquest or purchase, they still obstinately held this power, and excluded all their new subjects. It is a hundred and fifty years since a new citizen has been admitted; besides electing all the magistrates, and holding all offices, they have maintained a monopoly of commerce, and excluded all strangers, and even subjects of the canton, from conducting any in the town. Such are commons, as well as nobles and princes, whenever they have power unchecked in their hands![1]

There is, even in this commercial republic, a tribe of nobles, who consider trade as a humiliation.

The legislative authority is vested in the grand council of two hundred and twelve, including the senate.

The senate consists of twenty-four tribunes and four counsellors, chosen by the nobles; to these are added twenty, elected by the sovereign council, making in all, with the two burgomasters, fifty;[2] half of them administer six months, and are then

[1] The exclusive character of this system has been very much changed. The right of election is extended to the population of the whole canton, divided into sixty-five tribes, the number of representatives being apportioned, as nearly as possible, to the number of citizens. The city of Zurich chooses two for each of the thirteen tribes; the tribe of Winterthur chooses five; and each of the fifty-one remaining tribes chooses one. The grand council chooses the rest, one hundred and thirty in number.

[2] The senate now consists of only twenty-five chosen from and by the great council. The members of both bodies hold their places for six years, one third going out every two years.

There is, in addition, another council composed of the two burgomasters and

succeeded by the rest. The burgomasters are chosen annually by the sovereign council, and one of them is president of each division of the senate, which has the judicial power in criminal matters, without appeal, and in civil, with an appeal to the grand council.

The members of the senate are liable to be changed, and there is an annual revision of them, which is a great restraint.

The state is not only out of debt, but saves money every year, against any emergency. By this fund they supported a war in 1712 without any additional taxes. There is not a carriage in the town, except it be of a stranger.

Zurich has great influence in the general diet, which she derives more from her reputation for integrity and original Swiss independence of spirit, than from her power.

SCHAFFHAUSE.

The sovereign is the city of Schaffhause. The citizens, about sixteen hundred, are divided into twelve tribes, one of which consists of nobles, and eleven are ordinary citizens.

The sovereignty resides in the little and grand councils.

The senate, or little council of twenty-five, has the executive power.

The great council, comprising the senate, has the legislative, and finally decides appeals.

The burgomasters are the chiefs of the republic, and alternately preside in both councils.

Besides these there are, the secret council of seven of the highest officers; the chamber of justice, of twenty-five, including the president; the prætorian chamber, of thirteen, including the president; the consistory, of nine; and the chamber of accounts, of nine. The city has ten bailiwicks subject to it.[1]

of five members of the senate, elected by the grand council, which has the management of the foreign affairs.

[1] This organization is done away by the constitution adopted in 1814. A provision is therein made for a revision by the two bodies once in twelve years.

A material omission in this account is, that the councils were elective. Since this was written, however, a great change has taken place.

The canton is now divided into twenty-four tribes, of which twelve are of the city and twelve of the country.

Burghers and their sons of age are entitled to vote in the city, and all over twenty in the country.

The great council is composed of seventy-four members. Each tribe of the

THE CITY OF MULHOUSE.

The sovereign is the city; the sovereignty resides in the little and the grand council. The lesser council is composed of twenty-four persons, namely, — three burgomasters who preside by turns, each one six months, nine counsellors, and twelve tribunes, who succeed by election, and are taken from the grand council.

The grand council is composed of seventy-eight, namely, — the twenty-four of the lesser council, thirty-six members of the tribes, six from each, and eighteen taken from the body of the citizens, and elected three by each of the six tribes.

THE CITY OF BIENNE.

The republic of Bienne contains less than six thousand souls.

The regency is composed of the great council, in which the legislative authority resides, consisting of forty members; and of the little council, composed of twenty-four, who have the executive.

Each of these councils elect its own members from the six confraternities of the city.

The burgomaster is chosen by the two councils, presides at their meetings, and is the chief of the regency; he continues in office for life, although he goes through the form of an annual confirmation by the two councils, when the other magistrates submit to the same ceremony. The burgomaster keeps the seal, and, with the banneret, the treasurers, and the secretary, forms the economical chamber and the chamber of orphans.

This town sends deputies to the general diets, ordinary and extraordinary.[1]

city chooses four, the town of Stein four, and each of the tribes in the country two.

The little council is composed of twenty-four members. They make a part of the grand council, and are chosen one by each of the city tribes and by the town of Stein, making one of the four already enumerated in the grand council; the country members of the grand council select five more from among themselves, and the grand council in like manner elects the remaining six. They serve four years.

The burgomasters are elected by the grand council from the members of the little council.

[1] By the act of the congress of Vienna, the city and territory of Bienne was annexed and made a part of the canton of Bern.

THE REPUBLIC OF ST. GALL.

The republic of St. Gall is a league and a half in circumference, and contains nine thousand souls. The inhabitants are very industrious in manufactures of linen, muslin, and embroidery, have an extensive commerce, and arts, sciences, and literature are esteemed and cultivated among them. They have a remarkable public library, in which are thirteen volumes of original manuscript letters of the first reformers. To see the different effects of different forms of government on the human character, and the happiness and prosperity of nations, it would be worth while to compare this city with Constance, in its neighborhood.

This happy and prosperous, though diminutive republic, has its grand council of ninety persons, its little council of twenty-four, and three burgomasters. The little council consists of the three burgomasters, nine senators, and twelve tribunes. The grand council consists of all the little council, and eleven persons from each tribe; for the city is divided into the society of the nobles and six tribes of the artisans, of whom the weavers are the principal.[1]

Besides these, there are the chamber of justice, the chamber of five, and some others.*

* Let me add here, that the facts relating to the Swiss cantons and their environs, are taken from *Quarante Tables Politiques de la Suisse, par* C. E. Faber, Bernois, Pasteur à Bishviller, in 1746; with some additional observations from the beautiful Sketches of Mr. Coxe, which are as instructive as they are entertaining.

[1] By the act of the congress of Vienna, St. Gall was constituted a canton, and its constitution confirmed. By this constitution the territory was divided into eight districts and subdivided into forty-four circles.

The grand council consists of one hundred and fifty members, of whom eighty-four are of the catholic, and sixty-six of the reformed faith. They serve for three years, one third going out every year. One hundred of the number are chosen by the people, fifty-one directly, forty-nine through the intervention of electoral colleges; the remaining fifty are selected by the council itself from a triple list of candidates nominated by a special board.

The little council consists of nine members of the great council, elected by that body to serve for nine years, one third going out every three years.

Two persons, one a catholic, the other a protestant, are chosen biennially from the little council to serve as *Land-Ammans*. They preside in the councils.

It is proper to add, that since the revolution of 1830, in France, many of the aristocratic forms in Switzerland have been impaired, if not entirely overturned. But the great topic of interest has been a proposed modification of the federal system, which, if adopted, would materially affect the independence of the smaller cantons. This does not, however, come within the scope of the present work.

GENEVA.

In the republic of Geneva the sovereignty resides in the general council, lawfully convened, which comprehends all the orders of the state, and is composed of four syndics, chiefs of the republic, presidents of all the councils; of the lesser council of twenty-five; of the grand council of two hundred, though it consists of two hundred and fifty when it is complete; and of all the citizens of twenty-five years of age. The rights and attributes of all these orders of the state are fixed by the laws. The history of this city deserves to be studied with anxious attention by every American citizen. The principles of government, the necessity of various orders, and the fatal effects of an imperfect balance, appear nowhere in a stronger light. The fatal slumbers of the people, their invincible attachment to a few families, and the cool, deliberate rage of those families, if such an expression may be allowed, to grasp all authority into their own hands, when they are not controlled or overawed by a power above them in a first magistrate, are written in every page.*

The petty council is indifferently called the council of *twenty-five*, the *petit council*, or the *senate*.

The council of sixty is a body elected by the senate, and meets only for the discussion of foreign affairs.

The grand council and council of two hundred are one and the same body; it is still called the council of two hundred, though it now consists of two hundred and fifty members.

The general council, called indiscriminately the *sovereign council*, the *general assembly*, the *sovereign assembly*, the *assembly of the people*, or the *council general*, is composed of all the citizens or freemen of twenty-five years of age.

At the time of the Reformation, every affair, important or trifling, was laid before the general assembly; it was both a deliberating and acting body, that always left the cognizance of details to four syndics; this was necessary, in that time of danger, to attach the affections of the citizens to the support of the commonwealth by every endearing tie. The city was governed

* To prove this, I need only refer to the *Historical and Political View of the Constitution and Revolutions of Geneva in the Eighteenth Century*, by F. D'Ivernois.

by two syndics of its own annual election. The multiplicity of affairs had engaged each syndic to nominate some of the principal citizens to serve as assessors during his administration; these assessors, called counsellors, formed a council of twenty-five persons. In 1457, the general council decreed that the council of twenty-five should be augmented to sixty. This body, in 1526, was augmented to two hundred.

Thus far the aristocratical gentlemen proceeded upon democratical principles, and all is done by the general assembly. At this instant commences the first overt act of aristocratical ambition. Warm in their seats, they were loath to leave them, or hold them any longer at the will of the people. With all the subtlety and all the sagacity and address which is characteristic of this order of men, in every age and nation, they prevailed on the people to relinquish for the future the right of electing counsellors in the general assembly; and the people, with their characteristic simplicity and unbounded confidence in their rulers when they love them, became the dupes, and passed a law, that the two councils should for the future elect, or at least approve and affirm, each other. This is a natural and unavoidable effect of doing all things in one assembly, or collecting all authority into one centre. When magistrates and people meet in one assembly, the former will forever do as they please, provided they proceed with any degree of prudence and caution.

The consequence was, that the annual reviews were a farce. Only in a very few instances, and for egregious faults, were any excluded; and the two councils became perpetual, and independent of the people entirely. The illusions of ambition are very subtle. If the motives of these magistrates, to extend the duration of their authority, were the public good, we must confess they were very ignorant. It is most likely they deceived themselves, as well as their constituents, and mistook their own ambition for patriotism. But this is the progressive march of all assemblies; none can confine themselves within their limits, when they have an opportunity of transgressing them. These magistrates soon learned to consider their authority as a family property, as all others, in similar circumstances, ever did, and ever will.

They behaved like all others in another respect, too; their authority being now permanent, they immediately attacked the syndics, and transferred their power to themselves.

The whole history of Geneva, since that period, follows of course. The people, by their supineness, have given up all balances and betrayed their own privileges, as well as the prerogatives of their first magistrates, into the hands of a few families.

The people of Geneva, as enlightened as any, have never considered the necessity of joining with the syndics, nor the syndics, that of joining the people; but have constantly aimed at an impossibility, that of balancing an aristocratical by a democratical assembly, without the aid of a third power.[1]

[1] The French revolution, which broke out not long after the composition of these volumes, swept over Switzerland, overturning much of the old system, and introducing new features, which have not yet acquired a great share of stability. Napoleon remodelled the forms of government of all the different cantons, consulting the advantage of the people far more than their prejudices. The consequence was, that, with the fall of his power, his system ceased to have any support. Yet one fundamental change has survived all the conflicts and shocks of the last half century. The act of mediation decreed in 1803, that "there should be no longer, in Switzerland, any subject countries, nor special privileges of place or of birth, of persons or of families"; and the subsequent congress of the allied sovereigns at Vienna, in the reëstablishment of the various powers of Europe, acknowledged this principle in Switzerland, by organizing some of those subject countries as new cantons, with constitutions partaking of the general character of all the rest.

The purpose of the author, in reviewing these forms of government in Switzerland, seems to have been to try them by his standard of a well-balanced system. To this end, it was not necessary to extend his observation to the federal relation among the cantons, in some respects assimilating itself, however imperfectly, to that which binds together the United States. It is the organic, and not the superinduced structure, to which he confines his attention. Viewed in this light, the history of the Swiss, during the period since this book was written, indicates movement in a favorable direction. The most marked defect, however, still remains in almost undiminished force; the concentration of all power in the legislative body, by uniting with it the executive department, and retaining the principle of self-election closely in its hands.

Geneva, for example, which, up to 1782, had been gradually losing its republican, and acquiring a fixed aristocratic character, under the shock of the French revolution, has since been moving in an opposite direction. The constitution adopted in 1816 declares, in so many words, that "all Genevans are equal before the law."

The grand council, or legislative body, is composed of two hundred and fifty members, together with the syndics and the council of state, who make twenty-eight more. The former are chosen by all persons over twenty-five years old, who pay a specified amount in direct taxes. The clergy, the members of the university, and other establishments of education, are entitled to vote without regard to taxes. The mode of election is complicate. Thirty of the body go out every year, and are not reëligible in that year.

The council of state, or executive department, is filled by the votes of the grand council, and from its own members. Those not in by virtue of holding certain offices, as syndics, &c., are chosen for life, subject, however, to the scrutiny called *grabeau*, which may be entered into once a year by the larger body, on the requisition of one more than half, or a hundred and twenty-six. If

LUCCA.

The government of this republic is said to be purely aristocratical; yet the supreme power is lodged in the hands of two hundred and forty nobles, with the chief magistrate at their head, who is called *gonfaloniero*, or standard-bearer, and has the executive power. This magistrate is assisted by nine counsellors, called *anziani*, whose dignity lasts but nine months; he has a life-guard of sixty Swiss, and lives in the republic's palace, as do his counsellors, at the public expense; after six years he may be rechosen. The election of all officers is decided in the senate by ballot.[1]

GENOA.

The legislative authority of Genoa is lodged in the great senate, consisting of signors, or the doge and twelve other members, with four hundred noblemen and principal citizens, annually elected. All matters of state are transacted by the signori, the members of which hold their places for two years, assisted by some other councils; and four parts in five of the senate must agree in passing a law. The doge is obliged to reside in the public palace the two years he enjoys his office, with two of the signors and their families. The palace where he resides, and where the great and little council, and the two colleges of the *procuratori* and *rettori* assemble, is a large stone building in the centre of the city. At the expiration of his time, he retires to his own house for eight days, when his administration is either approved or condemned; and in the latter case, he is proceeded against as a criminal. At the election of the doge, a crown of

demanded, each individual is subjected to the test of a vote; and in case the number specified are found to be against him, he is obliged to vacate his seat, and return to the larger body. Four syndics are chosen annually by ballot from the grand council.

It is obvious that the whole power centres in a majority of the greater assembly. Rousseau remarked very justly of the system, — "Le corps chargé de l'exécution de vos loix en est l'interprète et l'arbitre suprême; il les fait parler comme il lui plaît; il peut les faire taire; il peut même les violer sans que vous puissiez y mettre ordre; il est au dessus des loix."

[1] By the act of the Congress of Vienna, Lucca was granted to the Infanta Maria Louisa, with the title of a duchy, and with complete sovereignty. In case of the extinction of her family, it was to be united to Tuscany

gold is placed on his head, and a sceptre in his hand, as King of Corsica; he is attended with life-guards, is clothed in crimson velvet, and styled Most Serene, the senators Excellencies, and the nobility Illustrious.

The nobility are allowed to trade in the wholesale way; to carry on velvet, silk, and cloth manufactures; and to have shares in merchant ships; and some of them, as the Palavicini, are actually the greatest merchants in Genoa.

The extent is about one hundred and fifty-two miles, the breadth from eight to twenty miles.[1]

VENICE.

The republic of Venice has existed longer[2] than that of Rome or Sparta, or any other that is known in history. It was at first democratical; and its magistrates, under the name of tribunes, were chosen by the people in a general assembly. A tribune was appointed annually to distribute justice on each of those islands which this people inhabited. Whether this can be called "collecting all authority into one centre," or whether it was not rather dividing it into as many parcels as there were islands, this simple form of government sufficed for some time, in so small a community, to maintain order; but the tyrannical administration of the tribunes and their eternal discords rendered a revolution necessary; and after long altercations and many projects, the people, having no adequate idea of the only natural balance of power among three orders, determined that one magistrate should be chosen as the centre of all authority — the eternal resource of every ignorant people, harassed with democratical distractions or aristocratical encroachments.

This magistrate must not be called king, but duke, and afterwards doge; he was to be for life, but at his death another was to be chosen; he was to have the nomination of all magistrates, and the power of peace and war. The unbounded popularity and great real merit of Paul Luc Anafeste added to the pressure of tribune tyranny and the danger of a foreign enemy, accom-

[1] The government was finally overturned, in 1799, by the armies of France. Genoa was granted by the allies, at Vienna, to the King of Sardinia, with certain conditions.

[2] The republic ceased to exist in 1798.

plished this revolution. The new doge was to consult only such citizens as he should judge proper; this, instead of giving him a constitutional council, made him the master;[1] he, however, sent polite messages to those he liked best, *praying* that they would come and advise him. These were soon called *pregadi*, as the doge's council is still called, though they are now independent enough of him.

The first and second doge governed mildly; but the third made the people repent of their confidence. After serving the state by his warlike abilities, he enslaved it; and the people, having no constitutional means to restrain him, put him to death in his palace, and resolved to abolish the office. Hating alike the name of tribune and of doge, they would have a master of the militia, and he should be annually eligible. Factions too violent for this transient authority arose; and, only five years after, the people abolished this office, and restored the power of the doge, in the person of the son of him whom in their fury they had assassinated. For a long course of years after this, the Venetian history discloses scenes of tyranny, revolt, cruelty, and assassination, which excite horror. Doges endeavoring to make their power hereditary, associating their eldest sons with them in office, and both together oppressing the people; these rising, and murdering them, or driving them into banishment, never once thinking of introducing a third order between them and their first magistrate, nor any other form of government, by which his power or theirs might be limited.[2] In the tenth century, a son of their doge took arms against his father, but was defeated, banished, and declared incapable of ever being doge; yet, no sooner was the father dead, than this worthless son was elected, and brought back in great pomp to Venice.[3] He soon became a tyrant and a monster, and the peo-

[1] Les historiens vénitiens se sont fait un point d'honneur de prouver que, par ce changement, Venise n'avait perdu ni son titre de république, ni sa liberté. Ceci ne serait qu'une dispute de mots. Qui gouverne seul est un monarque; la liberté n'est pas impossible dans la monarchie, ni la tyrannie dans la république. Venise elle-même nous fournira l'un et l'autre exemple. Daru, *Histoire de la République de Venise*, vol. i. p. 50.

[2] Out of fifty successively exercising the powers of this office during this period, five were massacred, nine deposed, five of whom were banished with deprivation of sight, five voluntarily abdicated, and one was killed in foreign war.

[3] Piero Candiano. See Daru, *Hist. de Venise*, vol. i. pp. 104–107.

ple tore him to pieces, but took no measure to frame a legal government. The city increased in commerce, and by conquests, and the new subjects were not admitted to the privileges of citizens; this accession of dominion augmented the influence of the doge. There was no assembly but that of the people, and another called the council of forty, for the administration of justice. This body, in the twelfth century, formed something like a plan of government.

Although the descendants of the ancient tribunes and doges were generally rich, and had a spontaneous respect shown to the antiquity of their families, they were not properly a nobility, having no legal rights, titles, or jurisdictions. As any citizen might be elected to a public office, and had a vote in the assemblies, it was necessary for the proudest among them to cultivate the good-will of the multitude, who made and murdered doges. Through all these contests and dissensions among a multitude, always impatient, often capricious, demanding at the same time all the promptitude and secrecy of an absolute monarchy, with all the license of a simple democracy, two things wholly contradictory to each other, the people had, to their honor, still maintained their right of voting in assembly, which was a great privilege, and nobody had yet dared to aim a blow at this acknowledged right of the people.

The council of forty now ventured to propose a plan like that of Mr. Hume, in his *Idea of a Perfect Commonwealth*, and like that which our friend, Dr. Price, informs us was proposed in the convention of Massachusetts.

The city was divided into six districts, called sestiers. The council of forty proposed that each of these partitions should name two electors, amounting to twelve in all, who should have the power of choosing from the whole city four hundred and seventy. These should have the whole power of the general assembly, and be called the grand council.

The people were amused with fine promises of order and regularity, and consoled with assertions that their right of election still continued, and that those who should not be chosen one year, might be the next. Not perceiving that this law would be fatal to their power, they suffered that aristocracy to be thus founded, which subsists to this hour. The next proposal was, that a committee of eleven should be appointed to name the

doge. Though the design of reducing the people to nothing might have been easily seen in these manœuvres, yet, wearied, irritated, and discouraged by eternal discords, they agreed to both.

The council of forty, having thus secured the people, turned their eyes to the doge, whose authority had often been perverted to the purposes of oppression; and, having no legal check, had never been restrained but by violence, and all the confusions which accompany it. They proposed that a privy council of six should be appointed for the doge, one from each division of the city, by the grand council themselves, and that no orders should be valid without their concurrence. This passed into a law, with unanimous applause. They then proposed a senate of sixty, who were to be elected out of the grand council, and to be called the *pregadi*.[1] This, too, was approved. The grand council of four hundred and seventy, the senate of sixty, the six counsellors, and eleven electors, were accordingly all chosen, and the last were sworn to choose the doge, without partiality, favor, or affection; and the new-chosen doge, having taken care to distribute money among the multitude, was received with universal acclamations. In his reign was instituted, by permission of the pope, the curious ceremony of wedding the sea, by a ring cast into it, *in signum veri et perpetui imperii*. Under the next doge, the *avogadori*[2] were instituted, to see that the laws were fully executed.

[1] "Quant aux attributions de ce conseil, il est probable qu'on ne les considéra d'abord que comme une délégation de l'assemblée générale, et que toute l'autorité du sénat s'établit par prescription." Daru, *Hist. de Vénise*.

[2] This most important modification of the system deserves a little more notice. Count Daru describes it thus: —

"Les assemblées sont sujettes à se laisser entraîner par la passion au-delà des formes ou des lois existantes; on sentit la nécessité d'un pouvoir régulateur ou modérateur, qui réclamât, dans l'intérêt des lois, même devant l'autorité suprême. On créa, sous le nom d'avogadors, trois magistrats, pour représenter la partie publique, non seulement dans les délibérations sur les affaires de l'état, mais encore dans les causes des particuliers. Devant les tribunaux, ils réglaient la compétence, ils défendaient les intérêts publics dans les affaires civiles, et poursuivaient l'accusation dans les affaires criminelles. Devant les conseils, ils requéraient la constante observation des lois et des formes, ils s'opposaient à la publication des ordonnances qui y étaient contraires. La présence de l'un deux au moins était nécessaire, pour la validité des délibérations du grand conseil et du sénat; ils étaient dépositaires de tous les actes de la législation; ils poursuivaient le paiement des amendes pécuniaires auxquelles les fonctionnaires pouvaient être condamnés. Enfin, rélativement aux magistrats, leur pouvoir s'étendait jusqu'à mettre opposition à la prise de possession des charges, lorsque ceux qui y avaient

In the thirteenth century, six new magistrates, called *correctors*, were created by the senate, to inquire into all abuses during the reign of a deceased doge, and report them to the senate; and it was enacted, that the fortune of the doge should indemnify the state for whatever damage it had suffered during his administration; and these correctors have been appointed at the decease of every doge since that time. In the next reign, a new tribunal of forty was erected, for the trial of civil causes.

In the same century, a new method of appointing the doge, by the famous ballot of Venice, a complicated mixture of choice and chance, was adopted. Each of the grand counsellors, now augmented to forty-one, to avoid the inconvenience of an equal division, draws a ball out of a box, containing thirty gilt and the rest white; those who draw the gilt ones go into another room, where is a box with thirty balls, nine of which are gilt, and draw again; and those who obtain the gilt balls are the *first electors*. They choose forty, comprehending themselves in that number; the forty, by repeating the whole process, are reduced to twelve *second electors*, the first of whom names three, and the rest two apiece; these twenty-five draw again from as many balls, nine of which are gilt; this reduces them to nine *third electors*, each of whom chooses five; which forty-five are reduced, by a repetition of the ballot, to eleven *fourth electors*, and they have the appointment of forty-one, who are the direct electors of the doge. The choice generally turns upon two or three candidates, whose names are put into another box, and drawn out. The first whose name is drawn retires, and proclamation is made for objections against him; if any are made, he comes in, and is heard in his defence. Then the electors proceed to determine by ayes and noes; if there are twenty-five ayes, he is chosen; if not, another name is read, and the same action taken, until there are twenty-five in the affirmative.[1]

The grand council, ever anxious to limit the power of the doge, soon thought it improper that the public acts should be

été nommés, étaient susceptibles de quelque reproche." Daru, vol. i. pp. 257–8.

These officers were further clothed with a power of veto upon the action of all the other powers in the state, which lasted for one month and a day, and could be renewed three times.

[1] This singularly complicated mode of election lasted for five centuries and a half.

signed by a chancellor appointed by him, and accordingly determined to appoint this officer themselves.[1]

The senate then began to think it too great a respect to the people, to have the new doge presented to them for their acclamations, and ordained that a syndic should congratulate him in the name of the people on his election. The populace, who had weakly surrendered their rights, were very angry at being deprived of this show, and proclaimed a doge of their own; but he was afraid of the contest, and retired; and the people, having no man of weight to head them, gave up this point.

The new doge, who had much contempt for popular government, and some resentment for the slight opposition he had met with, procured a law to be passed, that all the members of the grand council should hold their places for life, transmit them to their posterity, and that their elections by the people's electors should cease. This establishment of a hereditary legislative nobility, no doubt, shocked the citizens in general, but chiefly those of ancient families, who were not at that moment members of the grand council. To silence these, the most powerful of them were received into the grand council, and others had a promise that they should be admitted at a future time. Commerce and wars soon turned the attention of the rest of the people from all thought about the loss of their privileges. A few, however, some time after, formed a plan, not to convene the people in a body, and new-model the constitution, but to assassinate the doge and council all together. The plot, which was carried on by the plebeians, was discovered, and the chiefs executed. Another originated among the nobles, some of them of the grand council, who, being of very ancient families, could not bear to see so many citizens raised to a level with themselves, and others of them, the most distinguished of those who were not of the grand council, and had not been afterwards received, according to promise. This produced a skirmish in the city. A few of the conspiring nobles were killed, the rest routed, and many executed; but it was thought prudent to admit several

[1] "Cette institution offre une particularité rémarquable sous un autre rapport. En même temps qu'on donnait au grand-chancelier la prééminence sur les membres de tous les conseils excepté les conseillers du doge et les procurateurs de Saint-Marc, on réglait que le titulaire de cette dignité serait toujours choisi dans le corps des secrétaires. Or les secrétaires n'étaient pas tirés des familles nobles, mais de la bourgeoisie, qu'on appelait à Venise la citadinance. Daru.

from the most distinguished families. These two conspiracies produced a council of ten, upon which were afterwards engrafted the state inquisition.

Great care is taken in Venice to balance one court against another, and render their powers mutual checks to each other. The college called the signory, was originally composed of the doge and six counsellors; to these were added six of the grand council chosen by the senate, and called the *savii*, or sages; then five more for land affairs; and then five for sea affairs, in the room of whom five young noblemen are now chosen every six months, who attend, without a vote, for their education; to these were added the three chiefs of the criminal court, from a jealousy of the power of the college, which is both the cabinet council and the representative of the state, gives audience and answers to ambassadors, to agents of towns and generals of the army, receives all petitions, summons the senate, and arranges its business.

There is one instance of a doge's concerting a conspiracy to shake off the control of the senate; but as it was an old man of fourscore, whose young wife, on whom he doted, was not treated with sufficient respect by the nobility, we need not wonder that he had not sense enough to think of introducing a regular, well-balanced constitution, by a joint concurrence of the people and the nobility. The whole plan was to massacre the grand council; and, although he engaged in his design some of the highest officers, and a large party, the plot was discovered, the doge himself tried, condemned, and beheaded, as so infamous a piece of mad villany justly deserved.

A punctual execution of the laws is no doubt essential to the existence of this state; and there are striking instances of persons punishing their nearest relations with the most unrelenting severity; without this, the doge on one hand, or the people on the other, would soon think of a union against the ruling nobility. The aristocracy is always sagacious, and knows the necessity of a rigorous impartiality in order to preserve its power, and all the barriers we have described have been erected for this purpose. But all would be insufficient to restrain the popular passions, without the lions' mouths and the state inquisitors, which were ingrafted on the council of ten.

This terrible tribunal is sovereign in all crimes against the

state; it consists of ten, chosen yearly by the grand council; the six of the signory assist, and the doge presides when he pleases. Three chiefs, appointed monthly by lot, to open all letters, seize the accused, take examinations, and prosecute the prisoner, who is closely confined, allowed no council, and finally acquitted or condemned to death, in public or private, by the plurality of voices. This was the original tribunal; but it was not found sufficient, and (in the beginning of the sixteenth century)[1] the state inquisitors were created. This tribunal consists only of three persons, all taken from the council of ten, who have[2] authority to decide, without appeal, on the life of every citizen, the doge himself not excepted. They employ what spies they please. If they are unanimous, they may order a prisoner to be strangled in jail or drowned in the canal, hanged in the night or by day, as they please. If they are divided, the cause must go before the council of ten; but even here, if the guilt is doubtful, the rule is to execute the prisoner in the night. The three may command access to the house of every individual in the state,[3] and have even keys to every apartment in the palace of the doge, may enter his bed-chamber, break his cabinet, and search his papers. By this tribunal have doge, nobility, and people been kept in awe, and restrained from violating the laws, and to this is to be ascribed the long duration of this aristocracy.

Such are the happy effects of the spirit of families, when they are not bridled by an executive authority, in the hands of a first magistrate on one hand, and by an assembly of the people in person, or by adequate representation, on the other! Such are the blessings which, in course of ages, spring from a neglect in the beginning to establish three orders, and a perfect balance between them! There can be, in the nature of things, no balance without three powers. The aristocracy is always more sagacious

[1] Daru, in his history, assigns the year 1454 as the true date of this tribunal.

[2] In specified cases. There were other cases in which the power given was more limited. The patricians could not be condemned to death by this tribunal, nor by the council of ten.

[3] Any one of them might order the arrest and imprisonment of whom he pleased.

"A Venise le peuple l'appelle communément, le tribunal suprême, ou les trois d'en haut (i tre de sora), en baissant les yeux, et élévant un doigt vers le ciel, quand il en parle, comme pour indiquer une divinité terrible, et toute puissante, où qui au moins n'a de supérieur, que dans le ciel, (qui non habet ultorem nisi Deum)." *Mémoires Historiques et Politiques sur la République de Venise*, 1795, pt. i. p. 87.

than an assembly of the people collectively, or by representation, and sooner or later proves an overmatch in policy. It is always more cunning, too, than a first magistrate, and always makes of him a doge of Venice, a mere ceremony, unless he makes an alliance with the people, to support him against it. What is the whole history of the wars of the barons but one demonstration of this truth? What are all the standing armies in Europe but another? These were all given to kings by the people, to defend them against aristocracies. The people have been generally of M. Turgot's mind, that balances and different orders were unnecessary; and, harassed to death by the domination of noble families, they have generally surrounded the throne with troops to humble them. They have commonly succeeded so far as to make the nobles dependent on the crown; but, having given up the balance which they might have held in their own hands, they are still subject to as much aristocratical domination as the crowns think proper to permit. In Venice, the aristocratical passion for curbing the prince and the people has been carried to its utmost length.[1] It is astonishing to many that any man will accept the office of doge. Sagacious nobles, who always know, at least, the vices and weaknesses of the human heart better than princes or people, saw that there would generally be vanity enough in an individual to flatter himself, that he had the qualities to go through his administration without incurring censure, and with applause; and, further, that the frivolous distinction of living in the ducal palace, and being the first man in the nation,[2] though it were only the first among equals, would tempt most men to risk their lives and fortunes; and accordingly it has so happened. There has been an uncommon solicitude all along to restrain his power. This, no doubt, was to prevent him from a possibility of negotiating with the people against them; on the other hand, there have been uncommon exertions to annihilate every power, every hope in the people. This was to prevent them from having a legal possibility of applying to the doge for assistance. All this together

[1] "De tous les gouvernemens de l'Europe, celui de Venise était seul réglé, stable, et uniforme. Il n'avait qu'un vice radical qui n'en était pas un aux yeux du sénat; c'est qu'il manquait un contre-poids à la puissance patricienne, et un encouragement aux plébéiens. Le mérite ne put jamais dans Venise élever un simple citoyen." Voltaire.

[2] "Rex in purpurâ, senator in curiâ, in urbe captivus, extra urbem privatus."

would not, however, have succeeded, if death, in the shape of the inquisition, had not been made to stare both doge and people in the face, upon the first thought of their conferring together.

The nobles are divided into six classes, — 1. Twelve of the most ancient families. 2. Four families that in the year 880 subscribed to the building of the abbey of St. George. 3. Those whose names were written in the golden book, in 1296. 4. Those that were ennobled by the public in 1385. 5. Those who purchased their nobility for one hundred thousand ducats in 1646. And, 6. The strangers who have been received into the number of nobility. The whole make about two thousand five hundred.

There are four councils, — 1. The doge and the signoria of six. 2. The consiglio grande, in which all the nobles have seats and voices. 3. The consiglio de' pregadi, of two hundred and fifty, and is the soul of the republic. 4. The consiglio proprio delli dieci — and the state inquisitors.[1]

THE REPUBLIC OF THE UNITED PROVINCES OF THE LOW COUNTRIES.

Here were a stadtholder, an assembly of the states-general, a council of state; the stadtholder hereditary had the command of armies and navies, and appointment of all officers, &c.

Every province had an assembly besides, and every city, burgomasters, counsellors, and schepens or judges, besides an hooft officer and his dienders, for the police.

The history of this country, and its complicated constitutions, affords an inexhaustible store of materials to our purpose, but, considering the critical situation of it, prudence dictates to pass

[1] The storm which raged all over Europe carried with it the remnants of the once haughty and formidable aristocracy of Venice. By the act of the Congress of Vienna, Venice was transferred to Austria, which, on the twenty-fourth of April, 1815, promulgated a constitution for what was denominated the Lombardo-Venetian kingdom. Of this the Milanese made one part, and the Venetian territory the other. Its principal feature consists in what are called congregations. These are of two kinds, the central and the provincial. The central congregation is composed of nobles, of land owners not noble, and of representatives of royal towns. Each province sends one noble and one not noble. They are selected by the Austrian sovereign from lists of three candidates named by the corporate authorities. They serve for six years; one half go out every three years. The provincial congregation is composed in much the same way. The powers of both these bodies are merely advisory. In truth, it is the shadow of a popular form, whilst the substantial power is retained in the hands of the sovereign.

it over. With all the sagacity, and more wisdom than Venice or Bern, it has always had more consideration for the people than either, and has given more authority to the first magistrate. It has never had any exclusive preferences of families or nobles. Offices have, by law at least, been open to all men of merit.[1]

[1] The government of Holland grew out of the immediate necessities of the heroic struggle with the power of Spain. It never could be presented as a model for imitation by any people. It was a singular combination of corporation and aristocratic influence with the federal principle. The author had good reasons for avoiding at the moment of publication any analysis of the system, which was then crumbling, and has been since swept completely away. The present government is constructed somewhat, though not entirely, upon the principles advocated in this work. The executive power is vested in one person. The legislative department consists of two bodies, — one of one hundred and ten deputies, and the other of not less than forty. The former are elected by the states; one third go out yearly. The latter are appointed by the king, and serve for life. The system has worked sufficiently well thus far to resist the pressure which is again heaving the social foundations of Europe.

CHAPTER III.

MONARCHICAL OR REGAL REPUBLICS.

ENGLAND.

Poland and England. The history of these countries, the last especially, would confirm the general principle contended for. But who can think of writing upon this subject after De Lolme, whose book is the best defence of the political balance of three powers that ever was written?

If the people are not equitably represented in the house of commons, this is a departure in practice from the theory. If the lords return members of the house of commons, this is an additional disturbance of the balance. Whether the crown and the people in such a case will not see the necessity of uniting in a remedy,[1] are questions beyond my pretensions. I only contend that the English constitution is, in theory, both for the adjustment of the balance and the prevention of its vibrations, the most stupendous fabric of human invention; and that the Americans ought to be applauded instead of censured, for imitating it as far as they have done. Not the formation of languages, not the whole art of navigation and ship-building does more honor to the human understanding than this system of government. The Americans have not indeed imitated it in giving a negative upon their legislature to the executive power;[2] in this respect their balances are incomplete, very much I confess to my

[1] They have, to a certain extent, already done so by the reform bill of 1830.

[2] "This negative was an innovation on the true limited constitution, and, therefore, the Americans have been prudent in not trusting it with any executive power." S.

[1] The negative thus spoken of has practically become a nullity in the British constitution. The author, in his opinion, does but carry out his idea as developed in his draught of the constitution of Massachusetts. See p. 231. Even the qualified negative accorded to the executive head, by the constitution of the United States, has excited some disapprobation in its exercise; yet it has always been resorted to by those who claim the most closely to adhere to popular principles.

mortification; in other respects, they have some of them fallen short of perfection, by giving the choice of some militia officers, &c. to the people;[1] these are, however, small matters at present. They have not made their first magistrates nor their senators hereditary. Here they differ from the English constitution, and with great propriety.[2]

The agrarian[3] in America is divided among the common people in every state, in such a manner, that nineteen twentieths of the property would be in the hands of the commons, let them appoint whom they could for chief magistrate and senators. The sovereignty then, in fact, as well as morality, must reside in the whole body of the people; and a hereditary king and nobility, who should not govern according to the public opinion, would infallibly be tumbled instantly from their places. It is then not only most prudent, but absolutely necessary, in order to avoid continual violence, to give the people a legal, constitutional, and peaceable mode of changing these rulers, whenever they discover improper principles or dispositions in them. In the present state of society, and with the present manners, this may be done, not only without inconvenience, but greatly for the happiness and prosperity of the country. In future ages, if the present states become great nations, rich, powerful, and luxurious, as well as numerous, their own feelings and good sense will dictate to them what to do; they may make transitions to a nearer resemblance of the British constitution, by a fresh convention, without the smallest interruption to liberty. But this will never become necessary, until great quantities of property shall get into few hands.[4]

[1] "If the Americans preserve this most valuable *right* of *electing officers* in the militia, they will preserve a fundamental right of the English constitution. It is the only true means of preserving popular liberty, and of rendering the commons respectable. It is the true antidote to standing armies." S.

This was another modification of the system of the author, as presented in his draught of the constitution of Massachusetts. See p. 249.

[2] This would seem to be stated with sufficient distinctness; yet the author was for many years charged in the United States with favoring the very provision which he condemns.

[3] The land.

[4] "A true agrarian law is, therefore, highly necessary to be established in due time to limit the greedy monopolizers, and to invest the unoccupied lands in the community at large." S.

The preceding is the natural view of a resident of Great Britain.

It would be difficult to predict the period when the lands of the United States will get into few hands. The tendency of the laws of inheritance is perpetually

The truth is, that the people have ever governed in America; all the force of the royal governors and councils, even backed with fleets and armies, has never been able to get the advantage of them, who have stood by their houses of representatives in every instance, and have always carried their points. No governor ever stood his ground against a representative assembly. So long as he governed by their advice he was happy; so soon as he differed from them he was wretched, and was soon obliged to retire.

POLAND.

The king of Poland is the first magistrate in the republic, and derives all his authority from the nation. He has not the power to make laws, raise taxes, contract alliances, or declare war, nor to coin money, nor even to marry, without the ratification of the diet.

The senate is composed of the clergy and nobility; the third estate, or people, is not so much as known. The grand marshal, the marshal of the court, the chancellor, vice chancellor, and the treasurer, are the first senators.

The nobility or gentry possess the dignities and employments, in which they never permit strangers or the commonalty to have any participation; they elect their king, and never suffer the senate to make themselves masters of this election. The peasants are slaves to the gentry. Having no property, all their acquisitions are made for their masters; they are exposed to all their passions, and are oppressed by them with impunity.

The general diets, which are usually held at Warsaw or Grodno, are preceded by particular assemblies of palatinates, in which the deputies are chosen for the general assembly, and instructed; the deputies assembled in general diet, proceed to the election of a marshal, who has a very extraordinary power, that of imposing silence on whom he pleases; he is the chief or speaker of the assembly.

At the death, abdication, or deposition of a king, the primate calls the assembly of the electors to an open field near Warsaw.

to distribute and to subdivide whatever portion of land acquires any great market value. The remainder is not worth monopolizing.

Here the electors take an oath, not to separate until they shall have unanimously elected a king, nor to render him when elected any obedience, until he has sworn to observe the *pacta conventa* and the laws.

The candidates must let their gold glitter, and give splendid entertainments, which must be carried into debauch; the nobility are captivated with the attractions of magnificence and Hungarian wine, and infallibly declare in favor of the candidate who causes it to flow in the greatest profusion. The ambassadors enter upon intrigues, even in public; the nobility receive their presents, sell their suffrages with impunity, and render the throne venal; but they often behave with little fidelity to the candidate in whose interest they pretend to be engaged, and, forgetting the presents they have received, espouse, without hesitation, the cause of a more wealthy competitor. When the candidate has gained all the suffrages, he is declared king, is sworn to observe the *pacta conventa* and the laws, and then crowned. The Poles are polite and friendly; but magnificence is the foible of the nobility, and they sacrifice all things to luxury; as they seldom see any person superior to them in their own country, and treat their inferiors with an air of absolute authority, they live in all the splendor of princes. This is the account of the Abbé des Fontaines, in the year 1736; it is to be hoped things have since changed for the better; but if this account was true then, who can wonder at what has happened since?

Here again is no balance; a king, and an assembly of nobles, and nothing more. The nobles discover their unalterable disposition whenever they have the power to limit the king's authority; and there being no mediating power of the people, collectively or representatively, between them, the consequence has been what it always will be in such a case, confusion and calamity.

[1] In the most ancient times which records or history elucidate, the monarchy of Poland, like all others denominated feudal, was, in theory and pretension, absolute. The barons, too, in this country as in all others, were very often impatient under such restraint. When the prince was an able statesman and warrior, he was able to preserve order; but when he was weak and indo-

[1] Much of the following account is abridged from, where it is not in the very words of Coxe. *Travels into Poland, Russia, &c.*, vol. i. chapter 1.

lent, it was very common for two or three barons in conjunction to make war upon him;[1] and sometimes it happened that all together leagued against him at once. In every feudal country, where the people had not the sense and spirit to make themselves of importance, the barons became an aristocracy, incessantly encroaching upon the crown; and, under pretence of limiting its authority, they took away from it one prerogative after another, until it was reduced to the state of a mere doge of Venice, or avoyer of Bern; until the kings, by incorporating cities and granting privileges to the people, set them up against the nobles, and obtained by their means standing armies, sufficient to control both nobles and commons.

The monarchy of Poland, nearly absolute, sunk in the course of a few centuries, without any violent convulsion, into an aristocracy.

It came to be disputed whether the monarchy was hereditary or elective, and whether its authority was sovereign or limited. The first question is resolved by supposing that the crown continued always in the same family, although, upon the death of a king, his successor was recognized in an assembly of the nobles. The second may be answered by supposing, that when the king was active and capable, he did as he pleased; but when he was weak, he was dictated to by a licentious nobility. Casimir the Great retrenched the authority of the principal barons, and granted immunities to the lesser nobility and gentry; well aware that no other expedient could introduce order, except a limitation of the vast influence possessed by the palatines or principal nobility. If this prince had been possessed of any ideas of a free government, he might easily have formed the people and inferior gentry into an assembly by themselves, and, by uniting his power with theirs against the encroachments of the nobles upon both, have preserved his own. His nephew, Louis of Hungary, who succeeded him, being a foreigner, was, at his accession, obliged by the nobility to subscribe conditions, not to impose any taxes by his royal authority, without the

[1] "This can never happen while the people preserve their natural right of electing their own heads, or *militia officers;* for this will always enable them to suppress every insurrection and partial violence, to redress every grievance without any dangerous struggles or commotions, and to withhold from any other power, but their own general assembly, the ability of opposing their will by a negative." S.

consent of the nation, that is, of the nobles, for no other nation is thought on; and in case of his demise without male heirs, the privilege of appointing a king should revert to the nobles. In consequence of this agreement, Louis was allowed to ascend the throne. Having no son, with a view of insuring the succession to Sigismund, his son-in-law, he promised to diminish the taxes, repair the fortresses at his own expense, and to confer no offices or dignities on foreigners.

Louis died; but Sigismund was emperor, and therefore powerful, and might be formidable to the new immunities. The Poles, aware of this, violated the compact with Louis, neglected Sigismund, and elected Ladislaus, upon his ratifying Louis's promises, and marrying his daughter.

Ladislaus, having relinquished the right of imposing taxes, called an assembly of prelates, barons, and military gentlemen, in their respective provinces, in order to obtain an additional tribute. These provincial assemblies gave birth to the dietines; they now no longer retain the power of raising money in their several districts, but only elect the nuncios or representatives for the diet.

Ladislaus III., the son of the former, purchased his right to the succession, during the life of his father, by a confirmation of all the concessions before granted, which, at his accession, he solemnly ratified. Casimir III., brother of Ladislaus III., consented to several further innovations, all unfavorable to regal prerogative. One was the convention of a national diet, invested with the sole power of granting supplies. Each palatinate or province was allowed to send to the general diet, besides the palatines and other principal barons, a certain number of nuncios or representatives, chosen by the nobles and burghers. Is it not ridiculous, that this reign should be considered by the popular party as the era at which the freedom of the constitution was permanently established? This freedom, which consists in a king without authority, a body of nobles in a state of uncontrolled anarchy; and a peasantry groaning under the yoke of feudal despotism; the greatest inequality of fortune in the world; the extremes of riches and poverty, of luxury and misery, in the neighborhood of each other; a universal corruption and venality pervading all ranks; even the first nobles not blushing to be pensioners of foreign courts; one professing himself publicly

an Austrian, another a Prussian, a third a Frenchman, and a fourth a Russian; a country without manufactures, without commerce, and in every view the most distressed in the world!

But, to proceed with an enumeration of the measures by which they have involved themselves in these pitiable circumstances.

Casimir was involved in several unsuccessful wars, which exhausted his treasures. He applied to the diet for subsidies.

Every supply was accompanied with a list of grievances, and produced a diminution of the royal prerogative. The barons, at the head of their vassals, were bound to fight, and the king could require such feudal services in defence of the kingdom. But Casimir III., to obtain pecuniary aids, gave up the power of summoning the nobles to his standard, and of enacting any law without the concurrence of the diet. John Albert, to procure an election in preference to his elder brother, assented to all the immunities extorted from his predecessors, and in 1469 swore to their observance. Alexander, his successor, in 1505, declared the following limitations of sovereign authority to be fundamental laws of the kingdom: 1. The king cannot impose taxes. 2. He cannot require the feudal services. 3. Nor alienate the royal domains. 4. Nor enact laws. 5. Nor coin money. 6. Nor alter the process in the courts of justice. Sigismund I. succeeded Alexander, and under his reign the Polish constitution was the most tolerable, as the property of the subject was best secured, and the crown had considerable influence; but this did not satisfy the nobles. Under Sigismund Augustus, son and successor of Sigismund I., that favorite object of the Polish nobles, the free election of the king, was publicly brought forward; and the king was obliged to agree, that no future monarch should succeed to the throne, unless freely elected by the nation. Before this, the sovereigns, upon their accession, though formally raised by the consent of the nation, still rested their pretensions upon hereditary right, always styling themselves heirs of the kingdom of Poland. Sigismund Augustus was the last who bore that title; at his death, in 1572, all title to the crown from hereditary right was formally abolished, and the absolute freedom of election established upon a permanent basis. A charter of immunities was drawn up at a general diet, a ratification of which it was determined to exact of the new sovereign, prior to his election. This charter, called *pacta conventa*, contained the whole body of privi-

leges obtained from Louis and his successors, with the following additions: 1. That the king should be elective, and that his successor should never be appointed during his life. 2. That the diets, the holding of which depended solely upon the will of the kings, should be assembled every two years. 3. That every nobleman or gentleman in the realm should have a vote in the diet of election. 4. That in case the king should infringe the laws and privileges of the nation, his subjects should be absolved from their oaths of allegiance. From this period the *pacta conventa*, occasionally enlarged, have been confirmed by every sovereign at his coronation.

Henry of Valois, brother of Charles IX. of France, who ascended the throne after the constitution was thus new modelled, secured his election by private bribes to the nobles, and by stipulating an annual pension to the republic from the revenues of France. His example has been followed by every succeeding king; who, besides an unconditional ratification of the *pacta conventa*, has always been constrained to purchase the crown by a public largess and private corruption. Such is Polish liberty, and such the blessings of a monarchy elective by a body of nobles.

Under Stephen Bathori, the royal authority, or rather the royal dignity, was further abridged by the appointment of sixteen senators, chosen at each diet, to attend the king, and to give their opinion in all matters of importance, so that he could not issue any decree without their consent. Another fatal blow was given to the prerogative in 1578, by taking from the king the supreme jurisdiction of the causes of the nobles. It was enacted that, without the concurrence of the king, each palatinate should elect in its dietines its own judges, who should form supreme courts of justice, called *tribunalia regni*, in which the causes of the nobles should be decided without appeal, a mode which prevails to this day.

In the reign of John Casimir, in 1652, was introduced the *liberum veto*, or the power of each nuncio to interpose a negative and break up a diet, a privilege which the king himself does not enjoy. When the diet was debating upon transactions of the utmost importance, which required a speedy decision, a nuncio cried out, "I stop the proceedings,"[1] and quitted the

[1] "The danger of a negative on the proceedings of a great national council." S.

assembly. And a venal faction who supported his protest, unheard of as it was, obtained the majority, and broke up the assembly in confusion. The constitution was thus wholly changed, and an unlimited scope given to faction. The innovation was supported by the great officers of state, the general treasurer and marshal, who, being once nominated by the king, enjoyed their offices for life, responsible only to the diets, conscious that they could at all times engage a nuncio to protest, and thus elude an inquiry into their administration. It was also supported by the adherents of many nobles, accused of capital crimes before the diet, the only tribunal before which they could be tried. All the nuncios who opposed the raising of additional subsidies by taxes, which the exigencies of the state then demanded, seconded the proposal of putting an end to the assembly. But the principal cause of all was the foreign powers, interested to foment confusion in the Polish councils. Before this, they were obliged to secure a majority; afterwards, they might put an end to any diet unfriendly to their views, by corrupting a single member. This *veto* broke up seven diets in the reign of John Casimir, four under Michael, seven under John Sobieski, and thirty during the reigns of the two Augusti. In consequence of this necessity of unanimity, which they call the dearest palladium of Polish liberty, Poland has continued above a hundred years almost without laws.

But as the king still bestowed the starosties, or royal fiefs, which are held for life, and conferred the principal dignities and great offices of state, he was yet the fountain of honor, and maintained great influence in the councils of the nation; but this last branch of the royal prerogative was lately wrested from the crown by the establishment of the permanent council.

Thus it appears, in the history of Poland, as in that of Venice, Genoa, Bern, Soleure, and all others, that the nobles have continued, without interruption, to scramble for diminutions of the regal authority, to grasp the whole executive power, and augment their own privileges; and they have attained a direct aristocracy under a monarchical name, where a few are above the control, while the many are deprived of the protection of the laws.[1]

[1] "La république de Pologne, a t'on souvent dit et répété, est composée de trois ordres; l'ordre équestre, le sénat, et le roi. J'aimerois mieux dire que la

The present wretched state of the towns, compared with their former flourishing condition; the poverty of the peasants, whose oppressions have increased in proportion to the power of the nobles, having lost a protector when the king lost his weight in the constitution; the total confusion in all public affairs; the decline of importance and loss of territory; all show that absolute monarchy is preferable to such a republic. Would twelve millions of inhabitants, under an English constitution, or under the constitution of any one of the United States, have been partitioned and dismembered? No; not by a league of all the absolute sovereigns of Europe against them at once. Such are the effects of "collecting all authority into one centre," of neglecting an equilibrium of powers, and of not having three branches in the legislature.

The practice of cantoning a body of soldiers near the plain where the kings are elected, has been adopted by several foreign powers for near a century; and, although it may be galling to the nobility, it prevents the effusion of blood that formerly deluged the assembly. This was done at the election of Stanislaus Augustus, by the Empress of Russia and the King of Prussia; five thousand Russian troops were stationed at a small distance from the plain of Vola.

Stanislaus was in the thirty-second year of his age when, in 1764, he ascended the throne. From his virtues and abilities, the fairest hopes were conceived of his raising Poland from its deplorable situation; but his exertions for the public good were fettered by the constitution, by the factions of a turbulent people, and the intrigues of neighboring powers. His endeavors to introduce order at home and independence abroad, which would have increased the power of his country and her consideration with foreign nations, alarmed the neighboring powers. The spirit of religious intolerance produced a civil war, and the senate petitioned the ambassador from Petersburg not to withdraw the Russian troops. The royal troops, aided by the Russians, whose discipline was superior, were in favor of religious liberty. The confederates, secretly encouraged by Austria, assisted by the Turks, and supplied with money and officers by

nation Polonaise est composée de trois ordres; les nobles, qui sont tout; les bourgeois, qui ne sont rien; et les paysans, qui sont moins que rien."
Rousseau, *Cons. sur le Gouvernement de la Pologne.*

the French, were able to protract hostilities from 1768 to 1772; during which period the attempt was made to assassinate the king.

Count Pulaski, who was killed in the service of the United States, is said to have planned an enterprise so much to his dishonor. No good cause ever was, or ever will be, served by assassination; and this is happily, in the present age, the universal sense of mankind. If a papal nuncio was found in Poland, capable of blessing the weapons of conspirators against this tolerant king, he was a monster, whose bloody bigotry the liberal spirit of the pope himself must, at this enlightened period, abominate. The king did himself immortal honor by his intercession with the diet to remit the tortures and horrid cruelties decreed by the laws of most kingdoms in Europe against treason, and by his moderation towards all the conspirators.

We are now arrived at the consummation of all panegyrics upon a sovereignty in a single assembly — the partition.

Prussia was formerly in a state of vassalage to this republic; Russia once saw its capital and throne possessed by the Poles; and Austria was indebted to John Sobieski, a sovereign of this country, but a century ago, for compelling the Turks to raise the siege of Vienna. A republic so lately the protector of its neighbors would not, in an age of general improvement, without the most palpable imperfections in the orders and balances of its government, have declined, and become a prey to any invader — much less would it have forced the world to acknowledge that the translation of nearly five millions of people from a republican government to that of absolute empires and monarchies, whether it were done by right or by wrong, is a blessing to them. The partition was projected by the King of Prussia, who communicated it to the emperor and empress. The plague was one circumstance, and the Russian war against the Turks another, that favored the design; and the partition treaty was signed at Petersburg, in February, 1772, by the Russian, Austrian, and Prussian plenipotentiaries. The troops of the three courts were already in possession of the greatest part of Poland, and the confederates were soon dispersed. The partitioning powers proceeded with such secrecy, that only vague conjectures were made at Warsaw, and Lord Cathcart, the English minister at Petersburg, obtained no authentic informa-

tion of the treaty until two months after its signature. The formal notification was made to the king and senate at Warsaw by the imperial and Prussian ambassadors, in September, 1772, of the pretensions of their courts to the Polish territory. Their remonstrances, as well as those of the courts of London, Paris, Stockholm, and Copenhagen, had no effect; and the most humiliating record that ever appeared in the annals of a republic, is seen in the king's summons: — "Since there are no hopes from any quarter, and any further delays will only tend to draw down the most dreadful calamities upon the remainder of the dominions which are left to the republic, the diet is convened for the nineteenth of April, 1773, *according to the will of the three courts;* nevertheless, in order to avoid all cause of reproach, the king, with the advice of the senate, again appeals to the guaranties of the treaty of Oliva." It is not to be doubted that if there had been a people in existence in Poland, as there is in Holland, to have given this amiable prince only the authority of a stadtholder, he would have said, "I will die in the last ditch."

Of the dismembered provinces, the Russian portion, which is the largest territory, contains only one million and a half of souls; the Austrian, which is the most populous, contains two millions and a half; the Prussian, which is the most commercial, commanding the navigation of the Vistula, contains only eight hundred and sixty thousand. This has given a fatal blow to the commerce of Poland, by transferring it from Dantzic to Memel and Königsberg.

The finishing stroke of all remains.

The three ambassadors, on the thirteenth of September, 1773, delivered "A part of those cardinal laws, to the ratification of which our courts will not suffer any contradiction.

"I. The crown of Poland shall be forever elective, and all order of succession proscribed. Any person who shall endeavor to break this law shall be declared an enemy to his country, and liable to be punished accordingly.

"II. Foreign candidates to the throne, being the frequent cause of troubles and divisions, shall be excluded; and it shall be enacted, that, for the future, no person can be chosen king of Poland and great-duke of Lithuania, excepting a native Pole of noble origin, and possessing land within the kingdom. The son, or grandson, of a king of Poland, cannot be elected imme-

diately upon the death of his father or grandfather; and is not eligible excepting after an interval of two reigns.

"III. The government of Poland shall be forever free, independent, and of a republican form.

"IV. The true principle of said government consisting in the strict execution of its laws and the equilibrium of the three estates, namely,—the king, the senate, and the equestrian order, a permanent council shall be established, in which the executive power shall be vested. In this council the equestrian order, hitherto excluded from the administration of affairs in the interval of the diets, shall be admitted, as shall be more clearly laid down in the future arrangements."

Thus the supreme legislative authority resides in the three estates of the realm,—the king, the senate, and equestrian order, assembled in a national diet; but each estate has no negative upon the other, and, therefore, there is no balance, and very little check. The great families and principal palatines will still govern without any effectual control.

The executive power is now vested in the supreme permanent council; but neither here have they any checks, all being decided by the majority; and the same principal families will always prevail.

These august legislators have acknowledged the principle of a free republican government, that it consists in a strict execution of the laws and an equilibrium of estates or orders. But how are the laws to govern? and how is the equilibrium to be preserved? Like air, oil, and water, shaken together in one bottle and left in repose; the first will rise to the top, the last sink to the bottom, and the second swim between.

Our countrymen will never run delirious after a word or a name. The name republic is given to things, in their nature as different and contradictory as light and darkness, truth and falsehood, virtue and vice, happiness and misery. There are free republics, and republics as tyrannical as an oriental despotism. A free republic[1] is the best of governments, and the greatest blessing which mortals can aspire to. Republics which are not free, by the help of a multitude of rigorous checks, in very small states, and for short spaces of time, have preserved some

[1] This was the name given to the government of Massachusetts by a formal vote of the convention. See p. 215.

reverence for the laws, and have been tolerable; but there have been oligarchies carried to such extremes of tyranny, that so far as the happiness of the nation at large is concerned, the despotism of Turkey would perhaps be preferable. An empire of laws is a characteristic of a free republic only, and should never be applied to republics in general. If there should ever be a people in Poland, there will soon be a real king; and if ever there should be a king in reality, as well as in name, there will soon be *a people*. For, instead of the trite saying, "no bishop, no king," it would be much more exact and important truth to say, no people, no king, and no king, no people; meaning, by the word king, a first magistrate possessed exclusively of the executive power. It may be laid down as a universal maxim, that every government that has not three independent branches in its legislature will soon become an absolute monarchy; or an arrogant nobility, increasing every day in a rage for splendor and magnificence, will annihilate the people, and, attended with their horses, hounds, and vassals, will run down the king as they would hunt a deer, wishing for nothing so much as to be in at the death.

The philosophical King Stanislaus felt most severely this want of a people. In his observations on the government of Poland,[1] he laments, in very pathetic terms, the miseries to which they were reduced.

"The violence," says he, "which the patricians at Rome exercised over the people of that city, before they had recourse to open force, and, by the authority of their tribunes, balanced the power of the nobility, is a striking picture of the cruelty with which we treat our plebeians. Yet this portion of our state is even more debased among us than it was among the Romans, where it enjoyed a species of liberty, even in the times when it was most enslaved to the first order of the republic.

"We may say, with truth, that the people are, in Poland, in a state of extreme humiliation. We must, nevertheless, consider them as the principal support of the nation; and I am persuaded, that the little value we set on them might have very dangerous consequences.

[1] *Oeuvres du Philosophe Bienfaisant*, tome iii. p. 2.
The extracts are not made continuously, but only of such paragraphs as are most to the point.

"Who are they, in fact, who procure abundance in the kingdom? who are they that bear the burdens and pay the taxes? who are they that furnish men to our armies?[1] who labor our fields? who gather in the crops? who sustain and nourish us? who are the cause of our inactivity? the refuge of our laziness? the resource for our wants? the support of our luxury? and, indeed, the source of all our pleasures? Is it not that very populace that we treat with so much rigor? Their pains, their sweat, their labors, do not they merit a better return than our scorn and disdain? . . .

"We scarcely distinguish them from the brutes which *they* maintain for the cultivation of *our* lands! We frequently have less consideration for their strength than we have for that of those animals! and, too frequently, in a shameful traffic, we sell them to masters as cruel as ourselves, who immediately force them, by an excess of hard labor, to repay the price of their new slavery!

"I cannot recollect without horror, that law which imposes only a fine of fifteen livres upon a gentleman[2] who shall have killed a peasant. . . . Poland is the only country where the populace are fallen from all the rights of humanity; . . . we alone regard these men as creatures of another species, and we would almost refuse them the same air which they breathe with us. . . .

"God, in the creation of man, gave him liberty; what right have we to deprive him of it? . . .

"As it is natural to shake off a yoke that is rough, hard, and heavy, may it not happen that this people will make an effort to wrest themselves from our tyranny? Their murmurs and complaints must, sooner or later, lead to this. Hitherto, accustomed to their fetters, they think not of breaking them; but let a single man, with a masculine and daring spirit, arise among these unfortunate wretches, to concert and foment a revolt, what barrier strong enough could we oppose to the torrent?

"We have a recent instance, in the insurrection in the Ukraine, which was only occasioned by the vexations of those among us who had there purchased lands. We despised the courage of

[1] "But unhappily they did not elect their own officers and magistrates, and therefore could not put a negative on any the most atrocious tyranny and violence." S.

[2] "'Gentleman;' rather a landowner, to avoid, in this case, a strange perversion of the word gentleman!" S.

the poor inhabitants of that country; they found a resource in despair; and nothing is more terrible than the despair of those who have no courage.

"What is the condition to which we have reduced the people of our kingdom? Reduced by misery to the state of brutes, they drag out their days in a lazy stupidity, which one would almost mistake for a total want of feeling. They love no art; they value themselves on no industry; they labor no longer than the dread of chastisement forces them; convinced that they cannot enjoy the fruit of their ingenuity, they stifle their talents, and do not even try to comprehend what they are. Hence that frightful scarcity of the most common artisans in which we find ourselves. Should we wonder that we are in want of things the most necessary, when those who ought to furnish them cannot hope for the smallest profit from their labor to furnish us! It is only where liberty is found that emulation can exist."

It would be a pleasure to translate the whole; but it is too long. It is a pity that the whole people, whose misery he describes and laments, were not equally sensible of the necessity of a less circumscribed royal authority.[1]

[1] "Les écrivains les plus éloquens, les plus savans publicistes, ont démontré les vices de la constitution de Pologne, ont indiqué les moyens de les corriger; mais les baïonettes Russes, Autrichiennes, et Prussiennes n'ont pas laissé le temps d'éprouver l'effet des innovations proposées; elles ont rendu le repos à la nation Polonaise, en lui ôtant l'existence." *Précis de l'Histoire du Gouvernement de Pologne; Collection des Constitutions, etc.*, par MM. Dufau, etc., tome iv. p. 24.

Since this was written, the second partition has wiped Poland out of the list of independent nations. At the very same period that the constitution of the United States was formed, a new frame of government was maturing in Poland, designed to remedy the great evils under which the country had suffered from an unbalanced system. The constitution of 1791, in its leading features, seemed well calculated to answer this purpose. It made the crown hereditary in a family, thus endeavoring to correct the ill effects resulting from the old mode of election; it abolished the *liberum veto* of the diet, substituting a legislative department of two branches, according to the common form. But it rather opened a futurity to the popular will, than acknowledged its sovereign power; and could thus be considered more as a step in advance towards liberal institutions than as a really free government itself. But even this was probably the cause of its immediate destruction.

Catherine II., alarmed at the spread of the principles of the French revolution, deemed it all-important to prevent them from taking root in Poland. She first corrupted the system, and then she sent her forces into that country to crush all sincere opposition. In 1797, the final treaty was made between the three great powers of eastern Europe, which established the complete triumph of force over the will of a nation of eight millions of people.

Two observations naturally suggest themselves in reading the history of Poland. The one is, that no form of written constitution, however good it may

NEUCHATEL.

The sovereign, or rather the first magistrate of this monarchical republic, is the King of Prussia. The principality is composed of two countries, Neuchatel and Valengin, which were united in one single sovereignty by the Dukes of Longueville, whose family became extinct in 1707. The country submitted to the King of Prussia, who, by right of reversion, redemanded Neuchatel as a vacant fief of the house of Châlons, inherited by the Princes of Orange, to all the rights of whom he laid claim.

The authority of the king is limited by the great privileges of the country. The sovereignty is exercised conjointly, — 1. By the king's governor, who presides in the assembly of the states. 2. By the body of the three estates, composed of twelve judges, who administer justice in the last resort, and are four counsellors of state for the nobility. Four officers of judicature for the second rank, taken from the four chatellanies and the fifteen mayories. Four counsellors of the city, which is governed by sixty-four persons, who administer ordinary justice, and who are the four ministraux. Twenty-four persons for the little council, and forty for the grand council. The relation of this republican principality with the Helvetic body consists in an ancient fellow-citizenship with the four cantons of Bern, Lucerne, Fribourg, and Soleure; but the canton of Bern is particular protector, and the declared arbiter between it and its prince, since 1406. The city of Neuchatel has also a strict alliance of fellow-citizenship

be in itself, can ever be expected to avail, if it do not reflect the character and principles of the community that adopts it. This is the cause of the general failure of written forms in Europe and America. In all cases, they have been the work of a few minds acting without the circle of the national sympathies. The consequence has been, that the smallest agitation of public sentiment adverse to it has brought the whole of their labors to nought.

The other remark is, that much of the favorable working of a form of government, or the opposite, may be traced to circumstances having no necessary connection with its intrinsic excellence. The Polish constitution of 1791 was immediately overthrown by the interference of neighboring powers interested to destroy it. The constitution of the United States has survived until now, and bids fair to last yet longer. But, if we could for a moment suppose the geographical position of the two countries to have been exactly changed, looking back at the nature of the political controversies which agitated America for many years, it is at least open to question, whether as marked disorders would not have been developed under the constitution of the United States, as were ever found in the worst of times in Poland.

with Bern.[1] The whole country subject to it contains twelve leagues in length and six in breadth, and is extremely well peopled; for it contains three cities, one burgh, ninety large villages, and three thousand houses, scattered at a distance from each other. It is consolidated out of two counties, Neuchatel and Valengin; two baronies, Gorgier and Vaumarcus, which belong to a nobleman of Bern; four lordships, Travers, Noiraque, Rosières, and Colombier; one priory, Valtravers; five abbeys. At this day, this princely republic is divided into four chatellanies and fifteen mayories. The first count of Neuchatel that is known is Ulric, who lived towards the end of the twelfth century. He had a son named Berthold, who, in 1214, made a convention with the inhabitants, concerning the rights, liberties, and franchises of the citizens and people of the country.

In 1406, the inhabitants of Neuchatel obtained a confirmation of their liberties of John of Châlons, lord of the county. In 1519, they obtained another confirmation of their rights and liberties, and an acknowledgment that their princes have no power over them but with their own consent. They have even changed their religion; and, in 1530, abolished the mass and all the rites and ceremonies of the Roman Catholic church, without the consent of their prince. Yet they suffered the house of Orleans Longueville to continue to enjoy their rights and revenues. The last male of this line died in 1694. The Prince of Conti wanted to succeed by testament; but the three estates were against him, and rejected his demands in 1694 and 1699. At this time William, Prince of Orange and King of Great Britain, maintained that he had pretensions on the county, derived from the house of Châlons. At the death of this prince, in 1702, the King of Prussia declared himself his heir, as the son of the eldest sister of King William's father; and contended that the principality of Orange and the county of Neuchatel belonged to him. In 1707, after the death of Mary of Orleans, who had been invested in this principality by the three estates in 1694, the King of Prussia

[1] Neuchatel is now one of the twenty-two cantons of the Helvetic confederacy. Its form of local constitution has not been, however, materially changed. The King of Prussia ceded it, in 1806, to Napoleon, who made out of it a principality for one of his officers, Maréchal Berthier. In 1814, the sovereignty was restored, by the peace of Paris, to the King of Prussia; but in the next year, by the act of the congress of Vienna, the canton was recognized as one of three new ones joined to the confederation of Switzerland.

demanded the investiture of Neuchatel of the three estates, who granted it him because he was of their religion, and rejected the relations of the deceased and all other pretenders. His son, by the ninth article of the peace of Utrecht, obtained from Louis XIV. an acknowledgment of him as sovereign lord of Neuchatel and Valengin.

Although the inhabitants are jealous of their liberties, they are, nevertheless, attached to their prince. It is to the body of the states alone that it belongs to make statutes, laws, and ordinances, and they represent the sovereignty, and exercise the supreme authority. The king's governor presides in it, but enters not into consultation with the counsellors. It was this tribunal which gave the investiture to the kings, and before whom every pretender must make out his claim. Without descending to a particular account of this princely republic, let me refer to the *Dictionnaire de la Martinière* and to Faber, printed at the end of the sixth volume of it, and to Coxe's *Sketches*, and conclude with hinting at a few features only of this excellent constitution.

None but natives are capable of holding any office, civil or military, excepting that of governor. The same incapacity is extended to natives who are in the service of any foreign prince. All the citizens have a right to enter into the service of any foreign state, even though at war with Prussia. The three estates of Neuchatel and Valengin shall be assembled every year. The magistrates and officers of justice hold their employments during good behavior; nor is the king the judge of ill behavior. The king, at his accession, takes an oath to maintain all the rights, liberties, franchises, and customs, written or unwritten. The king is considered as resident only at Neuchatel, and, therefore, when absent, can only address the citizens through his governor and the council of state. No citizen can be tried out of the country, or otherwise than by the judges. The prince confers nobility, and nominates to the principal offices of state, civil and military; the chatelains and mayors, who preside in the several courts of justice, are also of his nomination. The prince, in his absence, is represented by a governor of his own appointing. He convokes the three estates; presides in that assembly, has the casting vote and the power of pardon. In his absence, his place is supplied by the senior counsellor of

state. The three estates form the superior tribunal; and to them lies an appeal from the inferior courts of justice. They are composed of twelve judges, divided into three estates:—the first consists of the four senior counsellors of state, who are noble; the second, of the four chatelains of Landeron, Boudry, Val de Travers, and Thiel; the third, of four counsellors of the town of Neuchatel. The judges in the first and second division hold their places for life; those in the third are appointed annually.

The council of state is intrusted with the execution of the laws, the administration, and police. They are nominated by the king, and not limited in number.

The legislative authority resides conjunctively in the prince, the council of state, and the town or people, each of which has a negative. Their criminal laws are mild, and the penalty marked out with precision; personal liberty is tenderly and securely protected, as it is in England or America, where the same laws, in substance and spirit, prevail. The liberties of the people, though the most absolute monarch in Germany is first magistrate, are better secured than even in the most democratical cantons of Switzerland, where there is no property to contend for beyond the value of a pail of milk, a kid, or a lamb. Liberal encouragement is given to strangers to settle in the country. They enjoy every privilege of trade and commerce. This enlarged policy has greatly augmented the population; while a narrower principle, in some of the Swiss cantons, occasions a decrease of their people. The ancient constitution of Rhodes was probably much like this of Neuchatel, in three branches, and was accordingly celebrated as one of the best models of government in antiquity, and had effects equally happy upon the order, liberty, commerce, and population of that country. This happy mixture in three branches has been the never-failing means of reconciling law and liberty, in ancient and in modern times. "Ita demum liberam civitatem fore, ita æquatas leges, si sua quisque jura ordo, suam majestatem teneat."* This is the only constitution in which the citizens can truly be said to be in that happy condition of freedom and discipline, sovereignty and subordination, which the Greeks express so concisely by their ἄρχειν και ἄρχεσθαι.

* Liv. lib. iii. c. 63.

"Who knows in union's closer bands to draw
The opposing claims of liberty and law,
Shall gain from virtue's breath a purer fame
Than all the poet or the sage can claim." *

"When will the tutelar gods of Rome awake,
To fix the order of our wayward state,
That we may once more know each other, — know
Th' extent of laws, prerogatives, and dues;
The bounds of rules and magistracy; who
Ought first to govern, and who must obey?
It was not thus, when godlike Scipio held
The scale of power; he who, with temperate poise,
Knew how to guide the people's liberty
In its full bounds, nor did the nobles wrong." †

* Pye's *Poems*, vol. i. p. 154, 155.
† Otway's *Fall of Marius*, act i. sc. 1.

RECAPITULATION.

As we have taken a cursory view of those countries in Europe where the government may be called, in any reasonable construction of the word, republican, let us now pause a few moments, and reflect upon what we have seen.

Among every people, and in every species of republics, we have constantly found *a first magistrate*, *a head*, *a chief*, under various denominations, indeed, and with different degrees of authority, with the title of stadtholder, burgomaster, avoyer, doge, gonfaloniero, president, syndic, mayor, alcalde, capitaneo, governor, or king; in every nation we have met with a distinguished officer. If there is no example, then, in any free government, any more than in those which are not free, of a society without a principal personage, we may fairly conclude that the body politic cannot subsist, any more than the animal body, without a head. If M. Turgot had made any discovery which had escaped the penetration of all the legislators and philosophers who have lived before him, he ought at least to have communicated it to the world for their improvement; but as he has never hinted at any such invention, we may safely conclude that he had none; and, therefore, that the Americans are not justly liable to censure for instituting *governors*.

In every form of government we have seen a *senate*, or *little council*, a composition, generally, of those officers of state who have the most experience and power, and of a few other members selected from the highest ranks and most illustrious reputations. On these lesser councils, with the first magistrate at their head, generally rests the principal burden of administration, a share in the legislative, as well as executive and judicial authority of government. The admission of such senates to a participation of these three kinds of power, has been generally observed to produce in the minds of their members an ardent aristocratical ambition, grasping equally at the prerogatives of the first magistrate, and the privileges of the people, and ending in the nobility of a few families, and a tyrannical oligarchy. But in

those states, where the senates have been debarred from all executive power, and confined to the legislative, they have been observed to be firm barriers against the encroachments of the crown, and often great supporters of the liberties of the people. The Americans, then, who have carefully confined their senates to the legislative power, have done wisely in adopting them.

We have seen, in every instance, another and a larger assembly, composed of the body of the people, in some little states; of representatives chosen by the people, in others; of members appointed by the senate, and supposed to represent the people, in a third sort; and of persons appointed by themselves or the senate, in certain aristocracies; to prevent them from becoming oligarchies. The Americans, then, whose assemblies are the most adequate, proportional, and equitable representations of the people, that are known in the world, will not be thought mistaken in appointing houses of representatives.

In every republic, — in the smallest and most popular, in the larger and more aristocratical, as well as in the largest and most monarchical, — we have observed a multitude of curious and ingenious inventions to balance, in their turn, all those powers, to check the passions peculiar to them, and to control them from rushing into those exorbitancies to which they are most addicted. The Americans will then be no longer censured for endeavoring to introduce an equilibrium, which is much more profoundly meditated, and much more effectual for the protection of the laws, than any we have seen, except in England. We may even question whether that is an exception.

In every country we have found a variety of *orders*, with very great distinctions. In America, there are different orders of *offices*, but none of *men*. Out of office, all men are of the same species, and of one blood; there is neither a greater nor a lesser nobility. Why, then, are the Americans accused of establishing different orders of men? To our inexpressible mortification, we must have observed, that the people have preserved a share of power, or an existence in the government, in no country out of England, except upon the tops of a few inaccessible mountains, among rocks and precipices, in territories so narrow that you may span them with a hand's breadth, where, living unenvied, in extreme poverty, chiefly upon pasturage, destitute of manufactures and commerce, they still exhibit the most charming

picture of life, and the most dignified character of human nature.

Wherever we have seen a territory somewhat larger, arts and sciences more cultivated, commerce flourishing, or even agriculture improved to any great degree, an aristocracy has risen up in a course of time, consisting of a few rich and honorable families, who have united with each other against both the people and the first magistrate; who have wrested from the former, by art and by force, all their participation in the government; and have even inspired them with so mean an esteem of themselves, and so deep a veneration and strong attachment to their rulers, as to believe and confess them a superior order of beings.

We have seen these noble families, although necessitated to have a head, extremely jealous of his influence, anxious to reduce his power, and to constrain him to as near a level as possible with themselves; always endeavoring to establish a rotation, by which they may all equally be entitled in turn to the preëminence, and likewise anxious to preserve to themselves as large a share as possible of power in the executive and judicial, as well as the legislative departments of the state.

These patrician families have also appeared in every instance to be equally jealous of each other, and to have contrived, by blending lot and choice, by mixing various bodies in the elections to the same offices, and even by a resort to the horrors of an inquisition, to guard against the sin that so easily besets them, of being wholly influenced and governed by a junto or oligarchy of a few among themselves.

We have seen no one government in which is a distinct separation of the legislative from the executive power, and of the judicial from both, or in which any attempt has been made to balance these powers with one another, or to form an equilibrium between the one, the few, and the many, for the purpose of enacting and executing equal laws, by common consent, for the general interest, excepting in England.

Shall we conclude, from these melancholy observations, that human nature is incapable of liberty, that no honest equality can be preserved in society, and that such forcible causes are always at work as must reduce all men to a submission to despotism, monarchy, oligarchy, or aristocracy?

By no means. We have seen one of the first nations in

Europe, possessed of ample and fertile territories at home and extensive dominions abroad, of a commerce with the whole world, immense wealth, and the greatest naval power which ever belonged to any nation, which has still preserved the power of the people by the equilibrium we are contending for, by the trial by jury, and by constantly refusing a standing army.[1] The people of England alone, by preserving their share in the legislature, at the expense of the blood of heroes and patriots, have enabled their king to curb the nobility, without giving him a standing army.

After all, let us compare every constitution we have seen with those of the United States of America, and we shall have no reason to blush for our country. On the contrary, we shall feel the strongest motives to fall upon our knees, in gratitude to heaven for having been graciously pleased to give us birth and education in that country, and for having destined us to live under her laws! We shall have reason to exult, if we make our comparison with England and the English constitution. Our people are undoubtedly sovereign; all the landed and other property is in the hands of the citizens; not only their representatives, but their senators and governors, are annually chosen; there are no hereditary titles, honors, offices, or distinctions; the legislative, executive, and judicial powers are carefully separated from each other; the powers of the one, the few, and the many are nicely balanced in the legislatures; trials by jury are preserved in all their glory, and there is no standing army; the *habeas corpus* is in full force; the press is the most free in the world. Where all these circumstances take place, it is unnecessary to add that the laws alone can govern.

[1] "Would that it had constantly been refused! A standing army is dangerous in any hands! Even if the people had preserved their share in the legislature, a standing army in their pay would be inexpedient and dangerous." S.

CHAPTER IV.

OPINIONS OF PHILOSOPHERS.

DR. SWIFT.

The authority of legislators and philosophers, in support of the system we contend for, is not difficult to find. The greatest lights of humanity, ancient and modern, have approved it, which renders it difficult to explain how it comes, in this enlightened age, to be called in question, as it certainly has been, by others as well as M. Turgot. I shall begin with one, who, though seldom quoted as a legislator, appears to have considered this subject, and to have furnished arguments enough forever to determine the question. Dr. Swift observes,* "that the best legislators of all ages agree in this, that the absolute power, which originally is in the whole body, is 'a trust too great to be committed to any one man or assembly;' and, therefore, in their several institutions of government, power, in the last resort, was always placed by them in balance among the one, the few, and the many; 'and it will be an eternal rule in politics among every free people, that there is a balance of power to be carefully held by every state within itself.'

"A mixed government, partaking of the known forms received in the schools, is by no means of Gothic invention, but hath place in nature and reason, and seems very well to agree with the sentiments of most legislators. . . . For, not to mention the several republics of this composition in Gaul and Germany, described by Cæsar and Tacitus, Polybius tells us, the best government is that which consists of three forms, *regis, optimatium, et populi imperio.*† Such was that of Sparta in its primitive institution by Lycurgus, who, observing the corruptions and depravations to which every one of these was subject, com-

* "*A Discourse of the Contests and Dissensions between the Nobles and Commons of Athens and Rome, with the Consequences they had upon both those States.*"

Much of the substance of this, the best of all the political tracts of Dean Swift, is given in the text.

† *Fragm.* lib. vi.

pounded his scheme out of all; so that it was made up of *reges, seniores, et populus.* Such also was the state of Rome under its consuls; and such, at Carthage, was the power in the last resort; they had their kings, senate, and people." A limited and divided power seems to have been the most ancient and inherent principle, both of the Greeks and Italians, in matters of government. "The difference between the Grecian monarchies and Italian republics was not very great. The power of those Grecian princes, who came to the siege of Troy, was much of a size with that of the kings of Sparta, the archon of Athens, the suffetes at Carthage, and the consuls at Rome." Theseus established at Athens rather a mixed monarchy than a popular state, assigning to himself the guardianship of the laws and the chief command in war. This institution continued during the series of kings to the death of Codrus, from whom Solon was descended,

"Who, finding the people engaged in two violent factions, of the poor and the rich, and in great confusion, refusing the monarchy which was offered him, chose rather to cast the government after another model, wherein he made due provision for *settling the balance of power*, choosing a senate of four hundred, and disposing the magistracies and offices according to men's estates; leaving to the multitude their votes in electing, and the power of judging certain processes by appeal. This council of four hundred was chosen, one hundred out of each tribe, and seems to have been a body representative of the people, though the people collective reserved a share of power to themselves."

"In all free states, the evil to be avoided is tyranny; that is to say, the *summa imperii*, or unlimited power, solely in the hands of the one, the few, or the many."

"Though we cannot prolong the period of a commonwealth beyond the decree of heaven or the date of its nature, any more than human life beyond the strength of the seminal virtue, yet we may manage a sickly constitution, and preserve a strong one; we may watch, and prevent accidents; we may turn off a great blow from without, and purge away an ill humor that is lurking within; and, by these and other such methods, render a state long-lived, though not immortal. Yet some physicians have thought, that if it were practicable to keep the several humors of

the body in an exact *balance* of each with its opposite, it might be immortal; and so perhaps would a political body, if the *balance of power* could be always held exactly even."

All independent bodies of men seem naturally to divide the three powers, of the one, the few, and the many. A free people met together, as soon as they fall into any acts of civil society, do of themselves divide into three ranks. "The first is that of some one eminent spirit, who, having signalized his valor and fortune in defence of his country, or, by the practice of popular arts at home, comes to have great influence on the people, to grow their leader in warlike expeditions, and to preside, after a sort, in their civil assemblies. And this is grounded upon the principles of nature and common reason, which, in all difficulties or dangers, where prudence or courage is required, do rather incite us to fly for counsel or assistance to a single person, than a multitude. The second is, of such men, who have acquired large possessions, and, consequently, dependencies, or descend from ancestors who have left them great inheritances, together with an hereditary authority; these, easily uniting in opinions, and acting in concert, begin to enter upon measures for securing their properties, which are best upheld by preparing against invasions from abroad and maintaining peace at home; this commences a great council or senate for the weighty affairs of the nation. The last division is of the mass of the people, whose part of power is great and indisputable, whenever they can unite, either collectively or by deputation, to exert it."

"The true meaning of a balance of power is best conceived by considering what the nature of a balance is. It supposes three things, — first, the part which is held, together with the hand that holds it; and then the two scales, with whatever is weighed therein. . . . In a state within itself, the balance must be held by a third hand, who is to deal the remaining power with the utmost exactness into the several scales. . . . The balance may be held by the weakest, who, by his address and conduct, removing from either scale and adding of his own, may keep the scales duly poised.

"When the balance is broken by mighty weights fallen into either scale, the power will never continue long, in equal division, between the two remaining parties; but, till the balance is fixed anew, will run entirely into one." This is made to appear

by the examples of the Decemviri in Rome, the Ephori in Sparta, the four hundred in Athens, the thirty in Athens, and the Dominatio Plebis in Carthage and Argos.

"In Rome, from the time of Romulus to Julius Cæsar, the commons were growing by degrees into power, gaining ground upon the patricians, as it were, inch by inch, till at last they quite overturned the balance, leaving all doors open to popular and ambitious men, who destroyed the wisest republic, and enslaved the noblest people that ever entered on the stage of the world.

"Polybius tells us, that in the second Punic war, the Carthaginians were declining, because the balance was got too much on the side of the people; whereas the Romans were in their greatest vigor, by the power remaining in the senate."

"The ambition of private men did by no means begin or occasion the war between Pompey and Cæsar, though civil dissensions never fail of introducing and spiriting the ambition of private men; . . . for, while the balance of power is equally held, the ambition of private men, whether orators or commanders, gives neither danger nor fear, nor can possibly enslave their country; but that once broken, the divided parties are forced to unite each to its head, under whose conduct or fortune one side is at first victorious, and at last both are slaves. And to put it past dispute, that the entire subversion of Roman liberty was altogether owing to those measures which had broken the balance between the patricians and plebeians, whereof the ambition of private men was but an effect and consequence, we need only consider, that when the uncorrupted part of the senate, by the death of Cæsar, made one great effort to restore the former liberty, the success did not answer their hopes; but that whole assembly was so sunk in its authority, that those patriots were forced to fly, and give way to the madness of the people, who by their own dispositions, stirred up with the harangues of their orators, were now wholly bent upon single and despotic slavery. Else how could such a profligate as Antony, or a boy of eighteen, like Octavius, ever dare to dream of giving the law to such an empire and people? Wherein the latter succeeded, and entailed the vilest tyranny that Heaven, in its anger, ever inflicted on a corrupt and poisoned people."[1]

[1] "It was the throne of the dragon, that is, of the devil and his angels, whose dominion was permitted by the Almighty, and foretold by his prophets." S.

It is "an error to think it an uncontrollable maxim, that power is always safer lodged in many hands than in one; for if these many hands be made up only from one of those three divisions, it is plain, from the examples produced, and easy to be paralleled in other ages and countries, that they are as capable of enslaving the nation, and of acting all manner of tyranny and oppression, as it is possible for a single person to be, though we should suppose their number not only to be of four or five hundred, but above three thousand.

"In order to preserve a balance in a mixed state, the limits of power deposited with each party ought to be ascertained and generally known. The defect of this is the cause that introduces those strugglings in a state about prerogative and liberty; about encroachments of the few upon the rights of the many, and of the many upon the privileges of the few; which ever did, and ever will, conclude in a tyranny; first, either of the few or the many, but at last, infallibly, of a *single person;* for, whichever of the three divisions in a state is upon the scramble for more power than its own, (as one or other of them generally is,) unless due care be taken by the other two, upon every new question that arises, they will be sure to decide in favor of themselves, talk much of inherent right; they will nourish up a dormant power, and reserve privileges *in petto*, to exert upon occasions, to serve expedients, and to urge upon necessities; they will make large demands and scanty concessions, ever coming off considerable gainers. Thus, at length, the balance is broken, and tyranny let in; from which door of the three it matters not.

"The desires of men are not only exorbitant, but endless; they grasp at all, and can form no scheme of perfect happiness with less. Ever since men have been united into governments, the hopes and endeavors after universal monarchy have been bandied among them. . . . The Athenians, the Spartans, the Thebans, and the Achaians, several times aimed at the universal monarchy of Greece; the commonwealths of Carthage and Rome affected the universal monarchy of the then known world. In like manner has absolute power been pursued by the several parties of each particular state; wherein single persons have met with most success, though the endeavors of the few and the many have been frequent enough; yet, being neither so uniform in their designs, nor so direct in their views, they neither could manage

nor maintain the power they had got, but were deceived by the popularity and ambition of some single person. So that it will be always a wrong step in policy, for the nobles and commons to carry their endeavors after power so far as to overthrow the balance.

"With all respect for popular assemblies be it spoken, it is hard to recollect one folly, infirmity, or vice, to which a single man is subject, and from which a body of commons, either collective or represented, can be wholly exempt. . . . Whence it comes to pass, that in their results have sometimes been found the same spirit of cruelty and revenge, of malice and pride; the same blindness, and obstinacy, and unsteadiness; the same ungovernable rage and anger; the same injustice, sophistry, and fraud, that ever lodged in the breast of any individual.

"When a child grows easy and content, by being humored; and when a lover becomes satisfied by small compliances, without farther pursuits; then expect to find popular assemblies content with small concessions. If there could one single example be brought from the whole compass of history, of any one popular assembly who, after beginning to contend for power, ever sat down quietly with a certain share; or of one that ever knew, or proposed, or declared, what share of power was their due; then might there be some hopes that it were a matter to be adjusted by reasonings, conferences, or debates.

"A usurping populace is its own dupe, a mere under-worker, and a purchaser in trust for some single tyrant, whose state and power they advance to their own ruin, with as blind an instinct as those worms that die with weaving magnificent habits for beings of a superior order to their own.

"The people are much more dexterous at pulling down and setting up, than at preserving what is fixed; and they are not fonder of seizing more than their own, than they are of delivering it up again to the *worst bidder*, with their own into the bargain. For although, in their corrupt notions of divine worship, they are apt to multiply their gods; yet their earthly devotion is seldom paid to above one idol at a time, of their own creation, whose oar they pull with less murmuring, and much more skill, than when they *share the leading*, or even *hold the helm*."

It will be perceived by the style, that it is Dr. Swift that has been speaking; otherwise the reader might have been deceived,

and imagined that I was entertaining him with further reflections upon the short account previously given, in these letters, of the modern republics. There is not an observation here that is not justified by the history of every government we have considered. How much more maturely had this writer weighed the subject than M. Turgot! Perhaps there are not to be found in any library so many accurate ideas of government, expressed with so much perspicuity, brevity, and precision.

DR. FRANKLIN.

As it is impossible to suppose that M. Turgot intended to recommend to the Americans a simple monarchy or aristocracy, we have admitted, as a supposition the most favorable to him, that, by collecting all authority into one centre, he meant a single assembly of representatives of the people, without a governor, and without a senate; and, although he has not explained, whether he would have the assembly chosen for life or years, we will again admit, as the most benign construction, that he meant the representatives should be annually chosen.

Here we shall be obliged to consider the reputed opinion of another philosopher, I mean Dr. Franklin. I say reputed, because I am not able to affirm that it is really his. It is, however, so generally understood and reported, both in Europe and America, that his judgment was in opposition to two assemblies, and in favor of a single one, that in a disquisition like this it ought not to be omitted. Shortly before the date of M. Turgot's letter, Dr. Franklin had arrived in Paris with the American constitutions, and among the rest that of Pennsylvania, in which there was but one assembly. It was reported, too, that the doctor had presided in the convention when it was made, and there approved it. M. Turgot, reading over the constitutions, and admiring that of Pennsylvania, was led to censure the rest, which were so different from it. I know of no other evidence that the Doctor ever gave his voice for a single assembly, but the common anecdote which is known to everybody. It is said, that in 1776, in the convention of Pennsylvania, of which the Doctor was president, a project of a form of government by one assembly was before them in debate; a motion was made to add another assembly, under the name of a senate or council. This

motion was argued by several members, some for the affirmative, and some for the negative; and before the question was put, the opinion of the president was requested. The president rose, and said, that "two assemblies appeared to him like a practice he had somewhere seen, of certain wagoners, who, when about to descend a steep hill with a heavy load, if they had four cattle, took off one pair from before, and chaining them to the hinder part of the wagon drove them up hill; while the pair before and the weight of the load, overbalancing the strength of those behind, drew them slowly and moderately down the hill."[1]

The president of Pennsylvania might, upon such an occasion, have recollected one of Sir Isaac Newton's laws of motion, namely, — "that reaction must always be equal and contrary to action," or there can never be any *rest*. He might have alluded to those angry assemblies in the heavens, which so often overspread the city of Philadelphia, fill the citizens with apprehension and terror, threatening to set the world on fire, merely because the powers within them are not sufficiently balanced. He might have recollected, that a pointed rod, a machine as simple as a wagoner, or a monarch, or a governor, would be sufficient at any time, silently and innocently, to disarm those assemblies of all their terrors, by restoring between them the balance of the powerful fluid, and thus prevent the danger and destruction to the properties and lives of men, which often happen for the want of it.

However, allusions and illustrations drawn from pastoral and rural life are never disagreeable, and, in this case, might be as apposite as if they had been taken from the sciences and the skies. Harrington, if he had been present in convention, would have exclaimed, as he did when he mentioned his two girls dividing and choosing a cake, "O! the depth of the wisdom of God, which, in the simple invention of a carter, has revealed to mankind the whole mystery of a commonwealth; which consists as much in dividing and equalizing forces; in controlling the weight of the load and the activity of one part by the strength of

[1] "The answer of Dr. Franklin is oracular; that is to say, is ambiguous. It may be taken both ways, like the oracles of old." S.

Dr. Franklin's marked characteristic was caution. The only inference that can be drawn from this declaration is to be obtained from the decision of the assembly. Since the publication of his Writings, however, there can be no doubt of his opinion. See Sparks's *Franklin*, vol. i. p. 409, vol. v. p. 165, vol. x. pp. 345, 361.

another, as it does in dividing and choosing." Harrington, too, instead of his children dividing and choosing their cake, might have alluded to those attractions and repulsions by which the balance of nature is preserved; or to those centripetal and centrifugal forces by which the heavenly bodies are continued in their orbits, instead of rushing to the sun, or flying off in tangents among comets and fixed stars; impelled or drawn by different forces in different directions, they are blessings to their own inhabitants and the neighboring systems; but if they were drawn only by one, they would introduce anarchy wherever they should go. There is no objection to such allusions, whether simple or sublime, so far as they may amuse the fancy and illustrate an argument; all that is insisted on is, that whatever there is in them of wit or argument, is all in favor of a complication of forces, of more powers than one; of three powers indeed, because a balance can never be established between two orders in society, without a third to aid the weakest.

All that is surprising here is, that the real force of the simile should have been misunderstood; if there is any similitude, or any argument in it, it is clearly in favor of two assemblies. The weight of the load itself would roll the wagon on the oxen and the cattle on one another, in one scene of destruction, if the forces were not divided and the balance formed; whereas, by checking one power by another, all descend the hill in safety, and avoid the danger. It should be remembered, too, that it is only in descending uncommon declivities that this division of strength becomes necessary. In travelling in ordinary plains, and always in ascending mountains, the whole team draws together, and advances faster as well as easier on its journey; it is also certain, there are oftener arduous steeps to mount, which require the united strength of all, with all the skill of the director, than there are precipices to descend, which demand a division of it.

Let us now return to M. Turgot's idea of a government consisting in a single assembly. He tells us our republics are "founded on the equality of all the citizens, and, therefore, 'orders' and 'equilibriums' are unnecessary, and occasion disputes." But what are we to understand here by equality? Are the citizens to be all of the same age, sex, size, strength, stature, activity, courage, hardiness, industry, patience, ingenuity,

wealth, knowledge, fame, wit, temperance, constancy, and wisdom? Was there, or will there ever be, a nation, whose individuals were all equal, in natural and acquired qualities, in virtues, talents, and riches? The answer of all mankind must be in the negative. It must then be acknowledged, that in every state, in the Massachusetts, for example, there are inequalities which God and nature have planted there, and which no human legislator ever can eradicate. I should have chosen to have mentioned Virginia, as the most ancient state, or indeed any other in the union, rather than the one that gave me birth, if I were not afraid of putting suppositions which may give offence, a liberty which my neighbors will pardon. Yet I shall say nothing that is not applicable to all the other twelve.

In this society of Massachusettensians then, there is, it is true, a moral and political equality of rights and duties among all the individuals, and as yet no appearance of artificial inequalities of condition, such as hereditary dignities, titles, magistracies, or legal distinctions; and no established marks, as stars, garters, crosses, or ribbons; there are, nevertheless, inequalities of great moment in the consideration of a legislator, because they have a natural and inevitable influence in society. Let us enumerate some of them: — 1. There is an inequality of wealth; some individuals, whether by descent from their ancestors, or from greater skill, industry, and success in business, have estates both in lands and goods of great value; others have no property at all; and of all the rest of society, much the greater number are possessed of wealth, in all the variety of degrees between these extremes; it will easily be conceived that all the rich men will have many of the poor, in the various trades, manufactures, and other occupations in life, dependent upon them for their daily bread; many of smaller fortunes will be in their debt, and in many ways under obligations to them; others, in better circumstances, neither dependent nor in debt, men of letters, men of the learned professions, and others, from acquaintance, conversation, and civilities, will be connected with them and attached to them. Nay, farther, it will not be denied, that among the wisest people that live, there is a degree of admiration, abstracted from all dependence, obligation, expectation, or even acquaintance, which accompanies splendid wealth, insures some respect, and bestows some influence. 2. Birth. Let no man be surprised that this

species of inequality is introduced here. Let the page in history be quoted, where any nation, ancient or modern, civilized or savage, is mentioned, among whom no difference was made between the citizens, on account of their extraction. The truth is, that more influence is allowed to this advantage in free republics than in despotic governments, or than would be allowed to it in simple monarchies, if severe laws had not been made from age to age to secure it. The children of illustrious families have generally greater advantages of education, and earlier opportunities to be acquainted with public characters, and informed of public affairs, than those of meaner ones, or even than those in middle life; and what is more than all, an habitual national veneration for their names, and the characters of their ancestors described in history, or coming down by tradition, removes them farther from vulgar jealousy and popular envy, and secures them in some degree the favor, the affection, and respect of the public. Will any man pretend that the name of Andros, and that of Winthrop, are heard with the same sensations in any village of New England? Is not gratitude the sentiment that attends the latter, and disgust the feeling excited by the former? In the Massachusetts, then, there are persons descended from some of their ancient governors, counsellors, judges, whose fathers, grandfathers, and great-grandfathers, are remembered with esteem by many living, and who are mentioned in history with applause, as benefactors to the country, while there are others who have no such advantage. May we go a step farther, — Know thyself, is as useful a precept to nations as to men. Go into every village in New England, and you will find that the office of justice of the peace, and even the place of representative, which has ever depended only on the freest election of the people, have generally descended from generation to generation, in three or four families at most. The present subject is one of those which all men respect, and all men deride. It may be said of this part of our nature, as Pope said of the whole: —

> "Of human nature, wit her worst may write,
> We all revere it in our own despite."

If, as Harrington says, the ten commandments were voted by the people of Israel, and have been enacted as laws by all other nations; and if we should presume to say, that nations had a

civil right to repeal them, no nation would think proper to repeal the fifth, which enjoins honor to parents. If there is a difference between right and wrong; if any thing can be sacred; if there is one idea of moral obligation; the decree of nature must force upon every thinking being and upon every feeling heart the conviction that honor, affection, and gratitude are due from children to those who gave them birth, nurture, and education. The sentiments and affections which naturally arise from reflecting on the love, the cares, and the blessings of parents, abstracted from the consideration of duty, are some of the most forcible and most universal. When religion, law, morals, affection, and even fashion, thus conspire to fill every mind with attachment to parents, and to stamp deep upon the heart their impressions, is it to be expected that men should reverence their parents while they live, and begin to despise or neglect their memories as soon as they are dead? This is in nature impossible. On the contrary, every little unkindness and severity is forgotten, and nothing but endearments remembered with pleasure.

The son of a wise and virtuous father finds the world about him sometimes as much disposed as he himself is, to honor the memory of his father; to congratulate him as the successor to his estate; and frequently to compliment him with elections to the offices he held. A sense of duty, his passions and his interest, thus conspiring to prevail upon him to avail himself of this advantage, he finds a few others in similar circumstances with himself; they naturally associate together, and aid each other. This is a faint sketch of the source and rise of the family spirit; very often the disposition to favor the family is as strong in the town, county, province, or kingdom, as it is in the house itself. The enthusiasm is indeed sometimes wilder, and carries away, like a torrent, all before it.[1]

These observations are not peculiar to any age; we have seen the effects of them in San Marino, Biscay, and the Grisons, as well as in Poland and all other countries. Not to mention any notable examples which have lately happened near us, it is not many months since I was witness to a conversation between some citizens of Massachusetts. One was haranguing on the jealousy which a free people ought to entertain of their liberties,

[1] The late election of a president in France, by the popular vote, will occur as a striking illustration of the force of these observations.

and was heard by all the company with pleasure. In less than ten minutes, the conversation turned upon their governor; and the jealous republican was very angry at the opposition to him. "The present governor," says he, "has done us such services, that he ought to rule us, he and his posterity after him, for ever and ever." "Where is your jealousy of liberty?" demanded the other. "Upon my honor," replies the orator, "I had forgot that; you have caught me in an inconsistency; for I cannot know whether a child of five years old will be a son of liberty or a tyrant." His jealousy was the dictate of his understanding. His confidence and enthusiasm the impulse of his heart.

The pompous trumpery of ensigns, armorials, and escutcheons are not, indeed, far advanced in America. Yet there is a more general anxiety to know their originals, in proportion to their numbers, than in any nation of Europe; arising from the easier circumstances and higher spirit of the common people. And there are certain families in every state equally attentive to all the proud frivolities of heraldry. That kind of pride, which looks down on commerce and manufactures as degrading, may, indeed, in many countries of Europe, be a useful and necessary quality in the nobility. It may prevent, in some degree, the whole nation from being entirely delivered up to the spirit of avarice. It may be the cause why honor is preferred by some to money. It may prevent the nobility from becoming too rich, and acquiring too large a proportion of the landed property. In America, it would not only be mischievous, but would expose the highest pretensions of the kind to universal ridicule and contempt. Those other hauteurs, of keeping the commons at a distance, and disdaining to converse with any but a few of a certain race, may in Europe be a favor to the people, by relieving them from a multitude of assiduous attentions and humiliating compliances, which would be troublesome. It may prevent the nobles from caballing with the people, and gaining too much influence with them in elections and otherwise. In America, it would justly excite universal indignation; the vainest of all must be of the people, or be nothing. While every office is equally open to every competitor, and the people must decide upon every pretension to a place in the legislature, that of governor and senator, as well as representative, no such airs will ever be endured. At the same time, it must be acknowledged, that some men must take

more pains to deserve and acquire an office than others, and must behave better in it, or they will not hold it.

We cannot presume that a man is good or bad, merely because his father was one or the other; and we should always inform ourselves first, whether the virtues and talents are inherited, before we yield our confidence. Wise men beget fools, and honest men knaves; but these instances, although they may be frequent, are not general. If there is often a likeness in feature and figure, there is generally more in mind and heart, because education contributes to the formation of these as well as nature. The influence of example is very great, and almost universal, especially that of parents over their children. In all countries it has been observed, that vices, as well as virtues, very often run down in families from age to age. Any man may go over in his thoughts the circle of his acquaintance, and he will probably recollect instances of a disposition to mischief, malice, and revenge, descending in certain breeds from grandfather to father and son. A young woman was lately convicted at Paris of a trifling theft, barely within the law which decreed a capital punishment. There were circumstances, too, which greatly alleviated her fault; some things in her behavior that seemed innocent and modest; every spectator, as well as the judges, was affected at the scene, and she was advised to petition for a pardon, as there was no doubt it would be granted. "No," says she; "my grandfather, father, and brother were all hanged for stealing; it runs in the blood of our family to steal, and be hanged. If I am pardoned now, I shall steal again in a few months more inexcusably; and, therefore, I will be hanged now." An hereditary passion for the halter is a strong instance, to be sure, and cannot be very common; but something like it too often descends, in certain breeds, from generation to generation.

If vice and infamy are thus rendered less odious, by being familiar in a family, by the example of parents and by education, it would be as unhappy as unaccountable, if virtue and honor were not recommended and rendered more amiable to children by the same means.

There are, and always have been, in every state, numbers possessed of some degree of family pride, who have been invariably encouraged, if not flattered in it, by the people. These have most acquaintance, esteem, and friendship with each other, and

mutually aid each other's schemes of interest, convenience, and ambition. Fortune, it is true, has more influence than birth. A rich man, of an ordinary family and common decorum of conduct, may have greater weight than any family merit commonly confers without it.

It will be readily admitted, there are great inequalities of merit, or talents, virtues, services, and what is of more moment, very often of reputation. Some, in a long course of service in an army, have devoted their time, health, and fortunes, signalized their courage and address, exposed themselves to hardships and dangers, lost their limbs, and shed their blood, for the people. Others have displayed their wisdom, learning, and eloquence in council, and in various other ways acquired the confidence and affection of their fellow-citizens to such a degree, that the public have settled into a kind of habit of following their example and taking their advice.

There are a few, in whom all these advantages of birth, fortune, and fame are united.

These sources of inequality, which are common to every people, and can never be altered by any, because they are founded in the constitution of nature; this natural aristocracy among mankind, has been dilated on, because it is a fact essential to be considered in the institution of a government. It forms a body of men which contains the greatest collection of virtues and abilities in a free government, is the brightest ornament and glory of the nation, and may always be made the greatest blessing of society, if it be judiciously managed in the constitution. But if this be not done, it is always the most dangerous; nay, it may be added, it never fails to be the destruction of the commonwealth.

What shall be done to guard against it? Shall they be all massacred? This experiment has been more than once attempted, and once at least executed. Guy Faux attempted it in England; and a king of Denmark,[1] aided by a popular party, effected it once in Sweden; but it answered no good end. The moment they were dead another aristocracy instantly arose, with equal art and influence, with less delicacy and discretion, if not principle, and behaved more intolerably than the former.

[1] This is an allusion to the massacre of Stockholm, committed by Christian II., denominated the Nero of the North.

The country, for centuries, never recovered from the ruinous consequences of a deed so horrible, that one would think it only to be met with in the history of the kingdom of darkness.

There is but one expedient yet discovered, to avail the society of all the benefits from this body of men, which they are capable of affording, and at the same time, to prevent them from undermining or invading the public liberty; and that is, to throw them all, or at least the most remarkable of them, into one assembly together, in the legislature; to keep all the executive power entirely out of their hands as a body; to erect a first magistrate over them, invested with the whole executive authority; to make them dependent on that executive magistrate for all public executive employments;[1] to give that first magistrate a negative on the legislature, by which he may defend both himself and the people from all their enterprises in the legislature; and to erect on the other side an impregnable barrier against them, in a house of commons, fairly, fully, and adequately representing the people, who shall have the power both of negativing all their attempts at encroachment in the legislature, and of withholding from them and from the crown all supplies, by which they may be paid for their services in executive offices, or even the public service may be carried on to the detriment of the nation.

We have seen, both by reasoning and in experience, what kind of equality is to be found or expected in the simplest people in the world. There is not a city nor a village, any more than a kingdom or a commonwealth, in Europe or America; not a horde, clan, or tribe, among the negroes of Africa, or the savages of North or South America; nor a private club in the world, in which inequalities are not more or less visible. There is, then, a certain degree of weight, which property, family, and merit, will have in the public opinion and deliberations. If M. Turgot had discovered a mode of ascertaining the quantity which they ought to have, and had revealed it to mankind, so that it might be known to every citizen, he would have deserved more of gratitude than is due to all the inventions of philosophers. But, as long as human nature shall have passions and imagination, there is too much reason to fear that these advantages, in many instances, will have more influence than reason and equity can justify.

[1] "If this means the appointment to offices, it is not advisable any more than the negative." S.

Let us then reflect, how the single assembly in the Massachusetts, in which our great statesman wishes all authority concentrated, will be composed. There being no senate nor council, all the rich, the honorable, and meritorious will stand candidates for seats in the house of representatives, and nineteen in twenty of them will obtain elections. The house will be found to have all the inequalities in it that prevailed among the people at large. Such an assembly will be naturally divided into three parts. The first is, some great genius, — some one masterly spirit, who unites in himself all the qualities which constitute the natural foundations of authority, such as benevolence, wisdom, and power; and all the adventitious attractions of respect, such as riches, ancestry, and personal merit. All eyes are turned upon him for president or speaker. The second division comprehends a third, or a quarter, or, if you will, a sixth or an eighth of the whole; and consists of those who have the most to boast of resembling their head. In the third class are all the rest, who are nearly on a level in understanding and in all things. Such an assembly has in it, not only all the persons of the nation, who are most eminent for parts and virtues, but all those who are most inflamed with ambition and avarice, and who are most vain of their descent. These latter will, of course, constantly endeavor to increase their own influence, by exaggerating all the attributes they possess, and by augmenting them in every way they can think of; and will have friends, whose only chance of rising into public view will be under their protection, who will be even more active and zealous in their service than themselves. Notwithstanding all the equality that can ever be hoped for among men, it is easy to see that the third class will, in general be but humble imitators and followers of the second. Every man in the second class will have constantly about him a circle of members of the third, who will be his admirers, perhaps afraid of his influence in the districts they represent, or related to him by blood, or connected with him in trade, or dependent upon him for favors. There will be much envy, too, among individuals of the second class, against the speaker, although a sincere veneration is shown him by the majority, and great external respect by all. I said there would be envy; because there will be among the second class several whose fortunes, families, and merits, in the acknowledged judgment of all, approach near to

the first; and, from the ordinary illusions of self-love and self-interest, they and their friends will be much disposed to claim the first place as their own right. This will introduce controversy and debate, as well as emulation; and those who wish for the first place, and cannot obtain it, will of course endeavor to keep down the speaker as near upon a level with themselves as possible, by paring away the dignity and importance of his office, as we saw was the case in Venice, Poland, and, indeed, everywhere else.

A single assembly thus constituted, without any counterpoise, balance, or equilibrium, is to have all authority, legislative, executive, and judicial, concentrated in it. It is to make a constitution and laws by its own will, execute those laws at its own pleasure, and adjudge all controversies that arise concerning the meaning and application of them, at its own discretion. What is there to restrain it from making tyrannical laws, in order to execute them in a tyrannical manner? Will it be pretended, that the jealousy and vigilance of the people, and their power to discard them at the next election, will restrain them? Even this idea supposes a balance, an equilibrium, which M. Turgot holds in so much contempt; it supposes the people at large to be a check and control over the representative assembly. But this would be found a mere delusion. A jealousy between the electors and the elected neither ought to exist, nor is it possible to exist. It is a contradiction to suppose that a body of electors should have at one moment a warm affection and entire confidence in a man, so as to intrust him with authority, limited or unlimited, over their lives and fortunes; and the next moment after his election, to commence a suspicion of him, that shall prompt them to watch all his words, actions, and motions,[1] and dispose them to renounce and punish him. They choose him, indeed, because they think he knows more, and is better disposed than the generality, and very often even than themselves. Indeed, the best use of a representative assembly, arises from the cordial affection and unreserved confidence which subsists be-

[1] "But future conduct may give just cause of suspicion; and, therefore, the representative, (according to the English constitution in its purity,) was elected only for a single session, the cause of which, if novel, was expressed in the election writs; and the representative had no right to determine in any new device, without consulting his constituents. These are the proper checks to aristocracy." S.

tween it and the collective body of the people. It is by such kind and candid intercourse alone, that the wants and desires of the people can be made known, on the one hand, or the necessities of the public communicated or reconciled to them, on the other. In what did such a confidence in one assembly end, in Venice, Geneva, Biscay, Poland, but in an aristocracy and an oligarchy? There is no special providence for Americans, and their nature is the same with that of others.

DR. PRICE.

To demonstrate the necessity of two assemblies in the legislature, as well as of a third branch in it, to defend the executive authority, it may be laid down as a first principle, that neither liberty nor justice can be secured to the individuals of a nation, nor its prosperity promoted, but by a fixed constitution of government, and stated laws, known and obeyed by all. M. Turgot, indeed, censures the "falsity of the notion, so frequently repeated by almost all republican writers, 'that liberty consists in being subject only to the laws;' as if a man could be free while oppressed by an unjust law. This would not be true, even if we could suppose that all laws were the work of an assembly of the whole nation; for certainly every individual has his rights, of which the nation cannot deprive him, except by violence and an unlawful use of the general power."

We often hear and read of free states, a free people, a free nation, a free country, a free kingdom, and even of free republics; and we understand, in general, what is intended, although every man may not be qualified to enter into philosophical disquisitions concerning the meaning, or to give a logical definition of the word liberty.

Our friend Dr. Price has distinguished very well, concerning physical, moral, religious, and civil liberty; and has defined the last to be "the power of a civil society to govern itself, by its own discretion, or by laws of its own making, by the majority, in a collective body, or by fair representation. In every free state every man is his own legislator. Legitimate government consists only in the dominion of *equal laws* made with *common consent*, and not in the dominion of any men over other men."

M. Turgot, however, makes the doctor too great a compli-

ment at the expense of former English writers, when he represents him as "the first of his countrymen who has given a just idea of liberty, and shown the falsity, so often repeated by almost all republican writers, that liberty consists in being subject only to the laws."

I shall cheerfully agree with M. Turgot, that it is very possible that laws, and even equal laws, made by common consent, may deprive the minority of the citizens of their rights. A society, by a majority, may govern itself, even by equal laws, that is by laws to which all, majority and minority, are *equally* subject, so as to oppress the minority. It may establish a uniformity in religion; it may restrain trade; it may confine the personal liberty of all equally, and against the judgment of many, even of the best and wisest, without reasonable motives, use, or benefit. We may go farther, and say that a nation may be unanimous in consenting to a law restraining its natural liberty, property, and commerce, and its moral and religious liberties too, to a degree that may be prejudicial to the nation and to every individual in it. A nation of catholics might unanimously consent to prohibit labor upon one half the days in the year, as feast days. The whole American nation might unanimously consent to a Sunday law and a warden act, which should deprive them of the use of their limbs one day in seven. A nation may unanimously agree to a navigation act, which should shackle the commerce of all. Yet Dr. Price's definition of civil liberty is as liable to this objection as any other. These would be all *equal laws* made with *common consent;* these would all be acts of legitimate government. To take in M. Turgot's idea, then, we must add to Dr. Price's ideas of *equal laws* by *common consent*, this other — for the *general interest* or the *public good.* But it is generally supposed that nations understand their own interest better than another; and, therefore, they may be trusted to judge of the public good; and in all the cases above supposed, they will be as free as they desire to be; and, therefore, they may with great propriety be called free nations, and their constitutions free republics. There can be no way of compelling nations to be more free than they choose to be.

But M. Turgot has mistaken the sense of republican writers, especially of the English ones. What republican writers he had in view, I know not. There is none that I remember, of any

name, who has given so absurd a definition of liberty. His countryman, Montesquieu, who will scarcely be denominated a republican writer, has said something the most like it; but it is manifest that his meaning was confined to equal laws, made by common consent. Although there may be unjust and unequal laws, obedience to which would be incompatible with liberty; yet no man will contend that a nation can be free that is not governed by fixed laws. All other government than that of permanent known laws, is the government of mere will and pleasure, whether it be exercised by one, a few, or many. Republican writers in general, and those of England in particular, have maintained the same principle with Dr. Price, and have said that legitimate governments, or well ordered commonwealths, or well constituted governments, were those where the laws prevailed; they have always explained their meaning to be *equal laws* made by *common consent* or the *general will* — that is to say, made by the majority, and equally binding upon majority and minority. As it is of importance to rescue the good old republican writers from such an imputation, let me beg your patience while we look into some of them.

Aristotle says, that "a government where the *laws alone* should prevail, would be the kingdom of God." This indeed shows that this great philosopher had much admiration of such a government. But it is not the assertion that M. Turgot condemns, namely, — that liberty consists in being subject to the laws only.

Aristotle says too, in another place, "Order is law, and it is more proper that law should govern, than any one of the citizens; upon the same principle, if it is advantageous to place the supreme power in some particular persons, they should be appointed to be only guardians and the servants of the laws." These too are very just sentiments, but not a formal definition of liberty.

Livy, too, speaks of happy, prosperous, and glorious times, when "Imperia legum potentiora fuerunt quam hominum." But he nowhere says that liberty consists in being subject only to the *legum imperio.*

Sidney says, "No sedition was hurtful to Rome, until, through their prosperity, some men gained a power above the laws."

In another place he tells us too, from Livy, that some, whose

ambition and avarice were impatient of restraint, complained that "leges rem surdam esse, inexorabilem, salubriorem inopi quam potenti."

And, in another, that "no government was thought to be well constituted, unless the laws prevailed against the commands of men." But he has nowhere defined liberty to be subjection to the laws only.

Harrington says, "Government *de jure*, or, according to ancient prudence, is an art, whereby a civil society of men is instituted and preserved upon the foundation of *common interest;* or, to follow Aristotle and Livy, it is an empire of laws and not of men. And government, to define it according to modern prudence, or *de facto*, is an art by which some man, or some few men, subject a city or a nation, and rule it according to his or their private interest; which, because the laws in such cases are made according to the interest of a man, or a few families, may be said to be the empire of men and not of laws."

Harrington[1] agrees, that law proceeds from the will of man, whether a monarch or people; and that this will must have a mover; and that this mover is interest. But the interest of the people is one thing — it is the public interest; and where the public interest governs, it is a government of laws, and not of men. The interest of a king, or of a party, is another thing — it is a private interest; and where private interest governs, it is a government of men, and not of laws. If in England there has ever been any such thing as a government of laws, was it not *magna charta?* and have not our kings broken *magna charta* thirty times? Did the law govern when the law was broken? or was that a government of men? On the contrary, hath not *magna charta* been as often repaired by the people? and, the law being so restored, was it not a government of laws, and not of men? Why have our kings, in so many statutes and oaths engaged themselves to govern by law, if there were not in kings a capacity of governing otherwise? It is true, that laws are neither made by angels, nor by horses, but by men. The voice of the people is as much the voice of men as the voice of a prince is the voice of a man; and yet the voice of the people is the voice of God, which the voice of a prince is not. The

[1] *Politicaster*, scene 2.

government of laws, said Aristotle, is the government of God. In a monarchy, the laws, being made according to the interest of one man, or a few men, must needs be more private and partial than suits with the nature of justice; but in a commonwealth, the laws, being made by the whole people, must come up to the public interest, which is common right and justice; and if a man know not what is his own interest, who should know it? and that which is the interest of the most or greatest number of particular men, being summed up in the common vote, is the public interest.

Sidney says, "Liberty consists solely in an independency on the will of another; and, by a slave, we understand a man who can neither dispose of his person or goods, but enjoys all at the will of his master." And again, "As liberty consists only in being subject to no man's will, and nothing denotes a slave but a dependence upon the will of another; if there be no other law in a kingdom but the will of a prince, there is no such thing as liberty."

M. Turgot might have perceived in these writers that a government of laws and not of men was intended by them as a description of a commonwealth, not a definition of liberty. There may be various degrees of liberty established by the laws, and enjoyed by the citizens, in different commonwealths; but still the general will, as well as the general interest, as far as it is understood by the people, prevails in all that can be denominated free. As the society governs itself, it is free, according to the definition of Dr. Price. The inquiry of these writers, in such passages, was not into the highest point of liberty, or greatest degree of it, which might be established by the general will and the common sense of interest, in their results or laws. They have taken it for granted that human nature is so fond of liberty, that, if the whole society were consulted, a majority would never be found to put chains upon themselves by their own act and voluntary consent.

But all men, as well as republican writers, must agree, that there can be no uninterrupted enjoyment of liberty, nor any good government in society, without laws, or where standing laws do not govern. In despotic states, in simple monarchies, in aristocracies, in democracies, in all possible mixtures of these, the individual continually enjoys the benefit of law, as he does that

of light and air, although, in most of those governments, he has no security for the continuance of it. If the laws were all repealed at once, in any great kingdom, and the event made known suddenly to all, scarcely a house in the great cities would remain in possession of its present inhabitants.

The great question therefore is, What combination of powers in society, or what form of government, will compel the formation, impartial execution, and faithful interpretation of good and equal laws, so that the citizens may constantly enjoy the benefit of them, and may be sure of their continuance? The controversy between M. Turgot and me is, whether a single assembly of representatives be this form? He maintains the affirmative. I am for the negative. Because such an assembly will, upon the first day of its existence, be an aristocracy; in a few days, or at least years, an oligarchy; and then it will divide into two or three parties, who will soon have as many armies; after which, when the battle is decided, the victorious general will govern without or with the advice of any council or assembly, as he pleases; or else, if the assembly continues united, it will in time exclude the people from all share even in elections, and make the government hereditary in a few families.

In order to be fully convinced of this, we must take an extensive view of the subject; and the first inquiry should be, what kind of beings men are? You and I admire the fable of Tristram Shandy more than the fable of the Bees, and agree with Butler rather than Hobbes. It is weakness rather than wickedness, which renders men unfit to be trusted with unlimited power. The passions are all unlimited; nature has left them so; if they could be bounded, they would be extinct; and there is no doubt they are of indispensable importance in the present system. They certainly increase too, by exercise, like the body. The love of gold grows faster than the heap of acquisition; the love of praise increases by every gratification, till it stings like an adder, and bites like a serpent; till the man is miserable every moment when he does not snuff the incense. Ambition strengthens at every advance, and at last takes possession of the whole soul so absolutely, that a man sees nothing in the world of importance to others or himself, but in his object. The subtlety of these three passions, which have been selected from all the others because they are aristocratical passions, in subdu-

ing all others, and even the understanding itself, if not the conscience too, until they become absolute and imperious masters of the whole mind, is a curious subject of speculation. The cunning with which they hide themselves from others, and from a man himself too; the patience with which they wait for opportunities; the torments they voluntarily suffer for a time, to secure a full enjoyment at length; the inventions, the discoveries, the contrivances they suggest to the understanding, sometimes in the dullest dunces in the world, if they could be described in writing, would pass for great genius.

We are not enough acquainted with the physical or metaphysical effects produced on our bodies or minds, to be able to explain the particular reason why every instance of indulgence strengthens and confirms the subsequent emotions of desire. The cause has hitherto been too deep, remote, and subtle, for the search of corporeal or intellectual microscopes; but the fact is too decided to deceive or escape our observation. Men should endeavor at a *balance* of affections and appetites, under the monarchy of reason and conscience, within, as well as at a balance of power without. If they surrender the guidance for any course of time to any one passion, they may depend upon finding it, in the end, a usurping, domineering, cruel tyrant. They were intended by nature to live together in society, and in this way to restrain one another, and in general they are a very good kind of creatures; but they know each other's imbecility so well, that they ought never to lead one another into temptation.* The passion that is long indulged and continually gratified becomes mad; it is a species of delirium; it should not be called guilt, but insanity. But who would trust his life, liberty, and property to a madman or an assembly of them? It would be safer to confide in knaves. Five hundred or five thousand together, in an assembly, are not less liable to this extravagance than one. The nation that commits its affairs to a single assembly, will assuredly find that its passions and desires augment as fast as those of a king. And, therefore, a constitution with a single assembly must be essentially defective.

* *Οἱ πλεῖστοι κακόι.* The majority are wicked. Bias. (J. A.)

The notes marked with the author's initials have been found written in the margin of his copy.

Others have seen this quality in human nature through a more gloomy medium.

Machiavel says, "those who have written on civil government lay it down as a first principle, and all historians demonstrate the same, that whoever would found a state, and make proper laws for the government of it, must presume that all men are bad by nature; that they will not fail to show that natural depravity of heart whenever they have a fair opportunity;* and that though it may possibly lie for a while concealed, on account of some secret reason, which does not then appear to men of small experience, yet time, which is therefore justly called the father of truth, commonly brings it to light in the end." Machiavel's translator remarks, that although this seems a harsh supposition, does not every Christian daily justify the truth of it, by confessing it before God and the world? and are we not expressly told the same in several passages of the Holy Scriptures, and in all systems of human philosophy?

Montesquieu says, "Constant experience shows us that every man invested with power is apt to abuse it. He pushes on till he comes to something that limits him. Is it not strange, though true, to say that virtue itself has need of limits? To prevent the abuse of power, it is necessary, that, by the very disposition of things, power should be a check to power. A government may be so constituted, as that no man shall be compelled to do things to which the law does not oblige him, nor forced to abstain from things which the law permits."

"So endless and exorbitant are the desires of men, that they will grasp at all, and can form no scheme of perfect happiness with less. It is hard to recollect one folly, infirmity, or vice, to which a single man is subjected, and from which a body of commons, collective or representative," (and he might have added a body of nobles,) "can be wholly exempt." *Swift.*

"Laws are intended not to trust to what men will do, but to guard against what they may do." *Junius.*

* *Hooker's Ecc. Pol.* lib. i. ss. 1; *Ibid.* ss. 10.

"Laws politic, ordained for external order and regiment amongst men, are never framed as they should be, unless presuming the will of man to be inwardly obstinate, rebellious, and averse from all obedience unto the sacred laws of his nature; in a word, unless presuming man to be, in regard of his depraved mind, little better than a wild beast, they do accordingly provide, notwithstanding, so to frame his outward actions that they be no hindrance unto the common good for which societies are instituted; unless they do this, they are not perfect."

"*Ogni uomo si fa centro di tutte le combinazioni del globo.*"
Beccaria.

"The ambitious deceive themselves, when they propose an end to their ambition; for that end, when attained, becomes a means." *Rochefoucauld.*

"Experience evinces that the happiest dispositions are not proof against the allurements of power, which has no charms but as it leads on to new advances. Authority endures not the very idea of restraint; nor does it cease to struggle, till it has beaten down every boundary." *De Lolme.*

Hobbes, Mandeville, Rochefoucauld, have drawn still more detestable pictures; and Rousseau, in his *Inequalities among Mankind*, gives a description of a civilized heart, too black and horrible to be transcribed.*

Even our amiable friends, those benevolent Christian philosophers, Dr. Price and Dr. Priestley, acquaint us that they are constrained to believe human nature no better than it should be. The latter says, there is no power on earth but has grown exorbitant when it has met with no control.

The former: "Such are the principles that govern human nature; such the weakness and folly of men; such their love of domination, selfishness, and depravity, that none of them can be raised to an elevation above others, without the utmost danger. The constant experience of the world has verified this, and proved that nothing intoxicates the human mind so much as power. In the establishment, therefore, of civil government, it would be preposterous to rely on the discretion of any men. A people will never oppress themselves or invade their own rights; but if they trust the arbitrary will of a body or succession of men, they trust enemies."

Shall we say that all these philosophers were ignorant of human nature? With all my soul, I wish it were in my power to quote any passages in history or philosophy, which might demonstrate all these satires on our species to be false. But the phenomena are all in their favor; and the only question to be raised with them is, whether the cause is wickedness, weakness, or insanity? In all events, we must agree, that human nature is not fit to

* "Heaven's Sovereign saves all beings but himself
That hideous sight, a naked human heart."
Night Thoughts. Narcissa. (J. A.)

be trusted with M. Turgot's system, of all authority in a single assembly.

A single assembly will never be a steady guardian of the laws, if Machiavel is right when he says: "Men are never good but through necessity. On the contrary, when good and evil are left to their choice, and they can practise the latter with impunity, they will not fail to throw every thing into disorder and confusion.[1] Hunger and poverty may make men industrious, but laws only can make them good; for, if men were so of themselves, there would be no occasion for laws; but, as the case is far otherwise, they are absolutely necessary. After the Tarquins were dead, who had been such a check upon the nobility, some other expedient was wanting that might have the same effect; so that, after much confusion and disorder, and many dangerous contests between the patricians and plebeians, certain officers, called *tribunes*, were created for the security of the latter; who, being vested with such privileges and authority as enabled them to become arbiters betwixt those two estates, effectually curbed the insolence of the former." Or, in the language of Dr. Franklin, the people insisted upon hitching a yoke of cattle behind the wagon, to draw up hill, when the patricians before should attempt to go too fast; or, in the style of Harrington, the commons, finding the patricians disposed to divide the cake unequally, demanded the privilege of choosing.

If Harrington's authority is not of great weight with some men, the reasons he assigns in support of his judgment are often eternal and unanswerable by any man. In his Oceana, he says: "Be the interest of popular government right reason, a man does not look upon reason as it is right or wrong in itself, but as it makes for him or against him. Wherefore, unless you can show such *orders* of a government as, like those of God in nature, shall be able to constrain this or that creature to shake off that inclination which is more peculiar to it, and take up that which regards the common good or interest; all this is to no more end, than to persuade every man in a popular government not to carve for himself of that which he desires most, but to be mannerly at the public table, and give the best from himself to decency and the *common interest.* But that such *orders* may be

[1] So great is the depravity of the human heart, that ministers, who only can know it, are in charity to mankind bound to keep it a secret, &c. (J. A.)

established, as may, nay must, give the upper hand in all cases to common right or interest, notwithstanding the nearness of that which sticks to every man in private, and this in a way of equal certainty and facility, is known even to girls; being no other than those which are of common practice with them in divers cases. For example, — two of them have a cake yet undivided, which was given between them. That each of them, therefore, might have that which is due, 'divide,' says one, 'and I will choose; or let me divide, and you shall choose.' If this be but once agreed upon, it is enough; for the divident, dividing unequally loses, in regard that the other takes the better half; wherefore, she divides equally, and so both have right. And thus, what great philosophers are disputing upon in vain, is brought to light by two harmless girls; even the whole mystery of a commonwealth, which lies only in dividing and choosing."

Now, if all authority is to be collected into one central assembly, it will have the whole power of division and choice; and we may easily conjecture what division and choice it will be. It will soon have possession of all the cakes, loaves, and fishes.

Harrington proceeds: "Nor has God, if his works in nature be understood, left so much to mankind to dispute upon, as who shall divide and who choose, but distributed them forever into two orders; whereof the one has the natural right of dividing, and the other of choosing. For example, — a commonwealth is but a civil society of men. Let us take any number of men, as twenty, and immediately make a commonwealth. Twenty men, if they be not all idiots, perhaps if they be, can never come so together but there will be such a difference in them, that about a third will be wiser, or at least less foolish, than all the rest. These, upon acquaintance, though it be but small, will be discovered, and (as stags that have the largest heads) lead the herd. For, while the six, discoursing and arguing one with another, show the eminence of their parts, the fourteen discover things that they never thought on, or are cleared in divers truths which had formerly perplexed them. Wherefore, in matter of common concernment, difficulty, or danger, they hang upon their lips as children upon their fathers; and the influence thus acquired by the six, the eminence of whose parts are found to be a stay and comfort to the fourteen, is the authority of the fathers — *auctoritas patrum*. Wherefore, this can be no other than a

natural aristocracy, diffused by God throughout the whole body of mankind, to this end and purpose; and, therefore, such as the people have not only a natural, but a positive obligation to make use of as their guides; as where the people of Israel are commanded to take wise men, and understanding, and known among their tribes, to be made rulers over them. The six then approved of, as in the present case, are the senate; not by hereditary right, or in regard to the greatness of their estates only, which would tend to such power as might force or draw the people; but by election for their excellent parts, which tends to the advancement of the influence of their virtue or authority, that leads the people. Wherefore, the office of the senate is not to be commanders, but counsellors of the people; and that which is proper to counsellors, is first to debate, and afterwards to give advice in the business whereon they have debated; whence the decrees of the senate are never laws, nor so called — *senatus consulta;* and these, being maturely framed, it is their duty to propose to the people. Wherefore, the senate is no more than the debate of the commonwealth. But to debate is to discern, or put a difference between things, that, being alike, are not the same; or it is separating and weighing this reason against that, and that reason against this; which is *dividing*.

"The senate, then, having divided, who shall choose? Ask the girls; for, if she that divided must have chosen also, it had been little worse for the other, in case she had not divided at all, but kept the whole cake to herself; in regard that, being to choose too, she divided accordingly.

"Wherefore, if the senate have any further power than to divide, the commonwealth can never be equal. But, *in a commonwealth consisting of a single council, there is no other to choose than that which divided.* Whence it is, that such a council fails not to *scramble*, that is, to be factious; there being no other dividing of the cake, in that case, but among themselves; *nor is there any other remedy, but to have another council to choose.* The wisdom of the few may be the light of mankind; but the interest of the few is not the profit of mankind, nor of a commonwealth. Wherefore, seeing we have granted interest to be reason, they must not choose, lest it put out their light. But as the council dividing consists of the wisdom of the commonwealth, so the assembly or council choosing should consist of the interest

of the commonwealth; as the wisdom of the commonwealth is in the aristocracy, so the interest of the commonwealth is in the whole body of the people. And whereas this, in case the commonwealth consist of a whole nation, is too unwieldy a body to be assembled, this council is to consist of such a representative as may be equal, and so constituted as it can never contract any other interest than that of the whole people. But, in the present case, the six dividing, and the fourteen choosing, must of necessity take in the whole interest of the twenty. Dividing and choosing, in the language of a commonwealth, is debating and resolving; and whatsoever, upon debate of the senate, is proposed to the people, and resolved by them, is enacted by the authority of the fathers, and by the power of the people—*auctoritate patrum et jussu populi;* which concurring make a law."

Upon these principles, and to establish a method of enacting laws that must of necessity be wise and equal, the people of most of the United States of America agreed upon that division of the legislative power into two houses, the house of representatives and the senate, which have given so much disgust to M. Turgot. Harrington will show us equally well the propriety and necessity of the other branch, the governor. But, before we proceed to that, it may be worth while to observe the similitude between this passage and some of those sentiments and expressions of Swift, which were quoted in a former letter; and there is in the *Idea of a Patriot King*, written by his friend, Lord Bolingbroke, a passage to the same purpose, so nobly expressed, that I cannot forbear the pleasure of transcribing it. "It seems to me that, in order to maintain the moral system of the universe at a certain point, far below that of ideal perfection, (for we are made capable of conceiving what we are not capable of attaining,) it has pleased the Author of Nature to mingle, from time to time, among the societies of men a few, and but a few of those on whom he has been graciously pleased to confer a larger proportion of the ethereal spirit, than in the ordinary course of his providence he bestows on the sons of men. These are they who engross almost the whole reason of the species. Born to direct, to guide, and to preserve, if they retire from the world their splendor accompanies them, and enlightens even the darkness of their retreat. If they take a part in public life, the effect is never indifferent. They either appear the instruments

of Divine vengeance, and their course through the world is marked by desolation and oppression, by poverty and servitude; or they are the guardian angels of the country they inhabit, studious to avert the most distant evil, and to procure peace, plenty, and the greatest of human blessings, liberty."

If there is, then, in society such a natural aristocracy as these great writers pretend, and as all history and experience demonstrate, formed partly by genius, partly by birth, and partly by riches, how shall the legislator avail himself of their influence for the equal benefit of the public? and how, on the other hand, shall he prevent them from disturbing the public happiness? I answer, by arranging them all, or at least the most conspicuous of them, together in one assembly, by the name of a senate; by separating them from all pretensions to the executive power, and by controlling in the legislative their ambition and avarice, by an assembly of representatives on one side, and by the executive authority on the other. Thus you will have the benefit of their wisdom, without fear of their passions. If among them there are some of Lord Bolingbroke's guardian angels, there will be some of his instruments of Divine vengeance too. The latter will be here restrained by a threefold tie, — by the executive power, by the representative assembly, and by their peers in the senate. But if these were all admitted into a single popular assembly, the worst of them might in time obtain the ascendency of all the rest. In such a single assembly, as has been observed before, almost the whole of this aristocracy will make its appearance, being returned members of it by the election of the people. These will be one class. There will be another set of members, of middling rank and circumstances, who will justly value themselves upon their independence, their integrity, and unbiased affection to their country, and will pique themselves upon being under no obligation. But there will be a third class, every one of whom will have his leader among the members of the first class, whose character he will celebrate, and whose voice he will follow; and this party, after a course of time, will be the most numerous. The question then will be, whether this aristocracy in the house will unite or divide? and it is too obvious, that destruction to freedom must be the consequence equally of their union or of their division. If they unite generally in all things, as much as they certainly will in respecting

each other's wealth, birth, and parts, and conduct themselves with prudence, they will strengthen themselves by insensible degrees, by playing into each other's hands more wealth and popularity, until they become able to govern elections as they please, and rule the people at discretion. An independent member will be their aversion; all their artifices will be employed to destroy his popularity among his constituents, and bring in a disciple of their own in his place.

But if they divide, each party will, in a course of time, have the whole house, and consequently the whole state, divided into two factions, which will struggle in words, in writing, and at last in arms, until Cæsar or Pompey must be emperor, and entail an endless line of tyrants on the nation. But long before this catastrophe, and indeed through every scene of the drama, the laws, instead of being permanent, and affording constant protection to the lives, liberties, and properties of the citizens, will be alternately the sport of contending factions, and the mere vibrations of a pendulum. From the beginning to the end it will be a government of men, now of one set, and then of another; but never a government of laws.

CHAPTER V.

WRITERS ON GOVERNMENT.

MACHIAVEL.

*Discourses upon the First Decade of Livy.**

The whole chapter is very much to the purpose, but the following paragraphs more particularly so: —

"According to some authors, there are but three sorts of government, namely, — monarchy or principality, aristocracy, and democracy; and that those who intend to erect a new state, must have recourse to some one of these which they like best. Others, and, as many think, with more judgment, say there are six sorts; three of which are very bad, and the other three good in themselves, but liable to be so corrupted that they may become the worst. The three good sorts have been just now mentioned. The other three proceed from these; and every one of them bears such a resemblance to that on which it respectively depends, that the transition from one to the other is short and easy; for monarchy often degenerates into tyranny, aristocracy into oligarchy, and democracy into licentious anarchy and confusion. So that, whoever sets up any one of the former three sorts of government, may assure himself it will not be of any long duration; for no precaution will be sufficient to prevent its falling into the other that is analogous to it, on account of the affinity which there seems to be in this case betwixt perfection and imperfection.

"This variety of governments among mankind appears to have been the effect of chance. For in the beginning of the world, the inhabitants being few, they some time lived separate from each other, like beasts; but afterwards, as they multiplied, they began to unite for their mutual defence, and put themselves under the protection of such as were most eminent amongst

* Book i. c. 2.

them for courage and strength, whom they engaged to obey and acknowledge as their chiefs. Hence arose the distinction betwixt honest and dishonest, just and unjust. For when any one injured his benefactor, his ingratitude excited a sort of fellow-feeling and indignation in others, as well as kindness and respect for those that behaved differently; and, as they considered that they might, some time or other, perhaps, be treated in the same manner themselves, if proper measures were not taken to prevent it, they thought fit to make laws for the reward of good men, and the punishment of offenders. This first gave rise to justice in the world; and from this consideration it came to pass in process of time, that, in the election of a new chief, they had not so much regard to courage and bodily strength, as to wisdom and integrity. But, afterwards, as this kind of government gradually became hereditary, instead of elective, the heirs of these chieftains soon began to degenerate from the virtue of their ancestors, and to behave themselves as if they thought the main duty of a prince consisted in surpassing all other men in luxury, extravagance, effeminacy, and every sort of voluptuousness; by which, beginning to be odious to their subjects, they, in turn, became fearful of them, and quickly passing from distrust to the commission of offences, there sprung up at once a tyranny. This first occasioned combinations and conspiracies for the destruction of princes; not amongst the weak and pusillanimous part of their subjects; but among such as, being more eminent for their generosity, magnanimity, riches, and birth, could not endure any longer to submit to the shameful life of such sovereigns.

"The multitude, therefore, swayed by the authority of the nobles, rose in arms against their prince; and, being freed from his yoke, they transferred their allegiance to their deliverers, who, being thoroughly disgusted at monarchy, changed the form of government, and took it into their own hands. At first, they conducted both themselves and the state according to the plan they had formed, preferring the common good to any particular advantage; and behaving, in private as well as public affairs, with assiduity and moderation, whilst the remembrance of their past sufferings continued fresh upon their minds. But this authority afterwards devolving upon their sons, who had not known changes of fortune, nor experienced evil, these began to grow so dissatisfied with that sort of civil equality, that they

cast off all restraint, and giving themselves up to rapine, ambition, and lust, soon changed the government again from aristocracy into an oligarchy. Their administration, however, becoming as insupportable, in a while, as the tyranny of the other had formerly been, the people naturally began to look out for some deliverer; and, having fixed upon a leader, they put themselves under his banners, and destroyed the oligarchy. But when they had done this, and came to reflect upon the oppressions they sustained under a tyrant, they resolved never to be again governed by any one man, and therefore agreed to set up a popular government; which was constituted in such a manner, that no authority was vested either in a prince or in a powerful few.

"Now, as all new establishments are held in some degree of reverence and veneration at first, this form subsisted for some time; though no longer than those people lived who had been the founders of it; for, after their death, their descendants degenerated into licentiousness, and such a contempt for all authority and distinction, that, every man living after his own caprice, there was nothing to be seen but confusion and violence. So that, either by the advice of some good and respectable man, or compelled by the absolute necessity of providing a remedy for these disorders and enormities, they at last determined once more to submit to the dominion of one. From which state they fell again in time, through the same gradations, and from the above-mentioned causes into misrule and licentiousness.

"And this is the rotation to which all states are subject; nevertheless, they cannot often revert to the same kind of government, because it is not possible that they should so long exist as to undergo many of these mutations. For it frequently happens that, when a state is laboring under such convulsions, and is destitute both of strength and counsel, it falls a prey to some other neighboring community or nation, that is better governed; otherwise, it might go the round of the several above-mentioned revolutions to infinity.

"All these sorts of government, then, in my opinion, are infirm and insecure; the three former from the usual shortness of their duration, and the three latter from the malignity of their own principles. The wisest legislators, therefore, being aware of these defects, never established any one of them in particular, but contrived another, that partakes of them all, consisting of a

prince, lords, and commons, which they looked upon as more firm and stable, because every one of these members would be a check upon the other; and of those legislators, Lycurgus certainly merits the highest praise, who constituted an establishment of this kind in Sparta, which lasted above eight hundred years, to his own great honor, as well as the tranquillity of the citizens.

"Very different was the fate of the government established by Solon at Athens, which, being a simple democracy only, was of so short continuance, that it gave way to the tyranny of Pisistratus before the death of the legislator. And though, indeed, the heirs of that tyrant were expelled about forty years after, and the Athenians not only recovered their liberty, but reëstablished Solon's laws and plan of government; yet they did not maintain it above one hundred years, notwithstanding they made several new regulations to restrain the insolence of the nobles and the licentiousness of the commons, the necessity of which Solon had not foreseen. So that, for want of tempering his democracy with a share of aristocracy and princely power, it was of short duration in comparison of the constitution of Sparta.

"But, to return to Rome. Though that city had not a Lycurgus to model its constitution at first, in such a manner as might preserve its liberty for a long course of time; yet, so many were the accidents which happened in the contests betwixt the patricians and plebeians, that chance effected what the lawgiver had not provided for; so that if it was not lucky at the beginning, it became so after a while; for though the first laws were deficient, yet they were not absolutely out of the right road to lead to its future perfection; since not only Romulus, but all the rest of the kings that succeeded him, made many and good laws, and such as were well calculated for the support of liberty. But, as it was their intention to found a monarchy, and not a republic; when that city had shaken off the yoke of a tyrant, there seemed to be many provisions still wanting for the further maintenance of its freedom. And though the kings finally lost their power, by the ways and means above mentioned, yet those who had chiefly contributed to it, immediately created two consuls to supply the place of royalty; by which it came to pass, that the name alone, and not the authority of princes was extinguished; so that the supreme power being lodged only in the consuls and senate, the

government consisted of no more than two of the three estates, which we have spoken of before, that is, of royalty and aristocracy; it remained, therefore, still necessary to admit the people into some share of the government; and the patricians growing so insolent in time, (as I shall show hereafter,) that the plebeians could no longer endure it, the latter took arms, and obliged them to relinquish part of their authority, lest they should lose the whole. On the other hand, the consuls and senators still retained so much power in the commonwealth as enabled them to support their rank and dignity with honor. This struggle gave birth to certain officers, called *tribunes of the people;* after the creation of whom, that state became more firm and compact, every one of the three degrees above mentioned having its proper share in the government. And so propitious was fortune to it, that although it was changed from a monarchy into an aristocracy, and afterwards into a democracy, by the steps and for the reasons already assigned, yet the royal power was never entirely abolished and given to the patricians, nor that of the patricians wholly to the plebeians. On the contrary, the authority of the three estates being duly proportioned and mixed together, made it a perfect commonwealth. And this was owing in a great measure, if not altogether, to the dissensions that happened betwixt the patricians and plebeians, as shall be shown more at large in the following chapters.

ALGERNON SIDNEY.

"Some small numbers of men, living within the precincts of one city, have, as it were, cast into a common stock, the right which they had of governing themselves and children, and, by common consent, joining in one body, exercised such power over every single person as seemed beneficial to the whole; and this, men call perfect democracy. Others chose rather to be governed by a select number of such as most excelled in wisdom and virtue; and this, according to the signification of the word, was called aristocracy. When one man excelled all others, the government was put into his hands under the name of monarchy. But the wisest, best, and by far the greatest part of mankind, rejecting these simple species, did form governments, mixed or composed of the three, as shall be proved hereafter, which com-

monly received their respective denomination from the great part that prevailed, and did deserve praise or blame, as they were well or ill proportioned." p. 22, § 9.

"The best governments of the world have been composed of monarchy, aristocracy, and democracy."

"As for democracy, I believe it can suit only with the convenience of a small town, accompanied with such circumstances as are seldom found. But this no way obliges men to run into the other extreme, inasmuch as the variety of forms, between mere democracy and absolute monarchy, is almost infinite. And if I should undertake to say, there never was a good government in the world that did not consist of the three simple species of monarchy, aristocracy, and democracy, I think I might make it good. This at the least is certain, that the government of the Hebrews, instituted by God, had a judge, the great sanhedrim, and general assemblies of the people. Sparta had two kings, a senate of twenty-eight chosen men and the like assemblies. All the Dorian cities had a chief magistrate, a senate, and occasional assemblies. The cities of Ionia, Athens, and others, had an Archon, the Areopagi, &c., and all judgments concerning matters of the greatest importance, as well as the election of magistrates, were referred to the people. Rome, in the beginning, had a king and a senate, while the election of kings and judgments upon appeals remained in the people; afterwards, consuls representing kings and vested with equal power, a more numerous senate, and more frequent meetings of the people. Venice has at this day a duke, the senate of the *pregadi*, and the great assembly of the nobility, which is the whole city; the rest of the inhabitants being only *incolæ*, not *cives;* and those of the other cities or countries are their subjects, and do not participate in the government.

"Genoa is governed in like manner. Lucca not unlike to them. Germany is at this day governed by an emperor, the princes or great lords in their several precincts; the cities by their own magistrates; and by general diets, in which the whole power of the nation resides, and where the emperor, princes, nobility, and cities have their places in person, or by their deputies. All the northern nations which, upon the dissolution of the Roman empire, possessed the best provinces that had composed it, were under that form, which is usually called the

Gothic polity. They had king, lords, commons, diets, assemblies of estates, cortes, and parliaments, in which the sovereign powers of those nations did reside, and by which they were exercised. The like was practised in Hungary, Bohemia, Sweden, Denmark, Poland; and, if things are changed in some of those places within a few years, they must give better proofs of having gained by the change, than are yet seen in the world, before I think myself obliged to change my opinion.

"Some nations, not liking the name of king, have given such a power as kings enjoyed in other places to one or more magistrates, either limited to a certain time, or left to be perpetual, as best pleased themselves; others, approving the name, made the dignity purely elective. Some have in their elections principally regarded one family as long as it lasted; others considered nothing but the fitness of the person, and reserved to themselves a liberty of taking where they pleased. Some have permitted the crown to be hereditary as to its ordinary course; but restrained the power, and instituted officers to inspect the proceedings of kings, and to take care that the laws were not violated. Of this sort were the Ephori of Sparta, the Maires du Palais, and afterwards the constable of France, the justiciar in Aragon, the reichshofmeeter in Denmark, the high steward in England; and in all places, such assemblies as are beforementioned under several names, who had the power of the whole nation, &c." p. 138, ch. ii. § 16.

"It is confessed, that a pure democracy can never be good, unless for a small town, &c." p. 147, § 18.

"As to popular government in the strictest sense, that is, pure democracy, where the people in themselves, and by themselves, perform all that belongs to government, I know of no such thing; and, if it be in the world, have nothing to say for it.

"If it be said that those governments in which the democratical part governs most, do more frequently err in the choice of men, or the means of preserving that purity of manners which is required for the well-being of a people, than those wherein aristocracy prevails, I confess it, and that in Rome and Athens, the best and wisest men did for the most part incline to aristocracy. Xenophon, Plato, Aristotle, Thucydides, Livy, Tacitus, Cicero, and others were of this sort. But if our author there seek patrons for his absolute monarchy, he will find none but Pha-

laris, Agathocles, Dionysius, Catiline, Cethegus, Lentulus, with the corrupted crew of mercenary rascals who did, or endeavored to set them up; these are they, quibus ex honesto nulla est spes; they abhor the *dominion of the law*, because it curbs their vices, and make themselves subservient to the lusts of *a man* who may nourish them." p. 161, ch. ii. § 19.

"Being no way concerned in the defence of democracy, &c., I may leave our knight, like Don Quixote, fighting against the phantasms of his own brain, and saying what he pleases against such governments as never were, unless in such a place as San Marino, near Sinigaglia, in Italy, where a hundred clowns govern a barbarous rock that no man invades, and relates nothing to our question." p. 165, § 21.

The republic of San Marino, next to that of Millingen in Switzerland, is the smallest republic in Europe. The limits of it extend no farther than the base of the mountain on which it is seated. Its insignificance is its security. No neighboring prince ever thought it worth his while to destroy the independency of such a beehive.*

"However, more ignorance cannot be expressed, than by giving the name of democracy to those governments that are composed of the three simple species, as we have proved that all the good ones have ever been; for, in a strict sense, it can only suit with those where the people retain to themselves the administration of the supreme power; and more largely, when the popular part, as in Athens, greatly overbalances the other two, and the denomination is taken from the prevailing part." p. 258.

MONTESQUIEU.

Spirit of Laws.†—*Of the Constitution of England.*

"In every government there are three sorts of power,—the legislative; the executive, in respect to things dependent on the law of nations; and the executive, in regard to things that depend on the civil law.

"By virtue of the first, (that is, the legislative power,) the prince or magistrate enacts temporary or perpetual laws, and

* See *Blainville's Travels*, vol. ii. p. 227; *Addison's Remarks on Several Parts of Italy.*

† Book 11, c. vi.

amends or abrogates those that have been already enacted. By the second, he makes peace or war, sends or receives embassies, establishes the public security, and provides against invasions. By the third, he punishes criminals, or determines the disputes that arise between individuals. The latter we shall call the judiciary power, and the other simply the executive power of the state.

"The political liberty of the citizen, is a tranquillity of mind, arising from the opinion each person has of his safety. In order to have this liberty, it is requisite the government be so constituted, as that one citizen need not be afraid of another citizen.

"When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate, or the same senate should enact tyrannical laws, to execute them in a tyrannical manner.

"Again, there is no liberty, if the power of judging be not separated from the legislative and executive powers. Were it joined with the legislative, the life and liberty of the citizens would be exposed to arbitrary control; for the judge would then be legislator. Were it joined to the executive power, the judge might behave with all the violence of an oppressor.

"There would be an end of every thing (*tout seroit perdu*) were the same man, or the same body, whether of princes, of the nobles, or of the people, to exercise those three powers,— that of enacting laws, that of executing the public resolutions, and that of judging the crimes or differences of individuals.

"Most kingdoms in Europe enjoy a moderate government; because the prince who is invested with the two first powers, leaves the third to his subjects. In Turkey, where these three powers are united in the sultan's person, the subjects groan under the weight of a most frightful oppression. In the republics of Italy, where these three powers are united, there is less liberty than in our monarchies. Hence their government is obliged to have recourse to as violent methods for its support as even that of the Turks; witness the state inquisitors at Venice, and the lion's mouth, into which every informer may at all hours throw his written accusations. What a situation must the poor citizen be in under those poor republics! The same body of magistrates are possessed, as executors of the laws, of

the whole power they have given themselves in quality of legislators. They may plunder the state by their general determinations; and, as they have likewise the judiciary power in their hands, every private citizen may be ruined by their particular decisions. The whole power is here united in one body; and, though there is no external pomp that indicates a despotic sway, yet the people feel the effects of it every moment.

"Hence it is, that many of the princes of Europe, whose aim has been levelled at arbitrary power, have constantly set out with uniting in their own persons all the branches of magistracy, and all the great offices of state.

"I allow, indeed, that the mere hereditary aristocracy of the Italian republics does not answer exactly to the despotic power of the eastern princes. The number of magistrates sometimes softens the power of the magistracy; the whole body of the nobles do not always concur in the same designs; and different tribunals are erected, that temper each other. Thus, at Venice, the legislative power is in the council, the executive in the *pregadi*, and the judiciary in the *quarantia*. But the mischief is, that these different tribunals are composed of magistrates all belonging to the same body, which constitutes almost one and the same power.

"The judiciary power ought not to be given to a standing senate; it should be exercised by persons taken from the body of the people, as at Athens, at certain times of the year, and pursuant to a form and manner prescribed by law, in order to erect a tribunal that should last only as long as necessity requires.

"By this means, the power of judging, a power so terrible to mankind, not being annexed to any particular state or profession, becomes, as it were, invisible. People have not then the judges continually present to their view. They fear the office, but not the magistrate.

"In accusations of a deep or criminal nature, it is proper the person accused should have the privilege of choosing, in some measure, his judges, in concurrence with the law; or, at least, he should have a right to except against so great a number, that the remaining part may be deemed his own choice. The other two powers may be given rather to magistrates, or permanent bodies, because they are not exercised on any private subject;

one being no more than the general will of the state, and the other the execution of that general will.

"But, though the tribunals ought not to be fixed, yet the judgments ought, and to such a degree as to be always conformable to the exact letter of the law. Were they to be the private opinion of the judge, people would then live in society without knowing exactly the obligations it lays them under.

"The judges ought, likewise, to be in the same station as the accused, or, in other words, his peers, to the end that he may not imagine he is fallen into the hands of persons inclined to treat him with rigor.

"If the legislative leaves the executive power in possession of a right to imprison those subjects who can give security for their good behavior, there is an end of liberty; unless they are taken up in order to answer, without delay, to a capital crime; in this case they are really free, being subject only to the power of the law.

"But should the legislative think itself in danger, by some secret conspiracy against the state, or by a correspondence with a foreign enemy, it might authorize the executive power, for a short and limited time, to imprison suspected persons, who, in that case, would lose their liberty only for a while, to preserve it for ever. And this is the only reasonable method that can be substituted to the tyrannical magistracy of the Ephori, and to the state inquisitors of Venice, who are also despotical.

"As, in a free state, every man, who is supposed a free agent, ought to be his own governor; so the legislative power should reside in the whole body of the people. But since this is impossible in large states, and in small ones is subject to many inconveniences, it is fit the people should execute by their representatives, what they cannot execute by themselves.

"The inhabitants of a particular town are much better acquainted with its wants and interests than with those of other places; and are better judges of the capacity of their neighbors than of that of the rest of their countrymen. The members, therefore, of the legislature should not be chosen from the general body of the nation; but it is proper that, in every considerable place, a representative should be elected by the inhabitants.

"The great advantage of representatives is, their being capable of discussing affairs; for this the people collectively are

extremely unfit, which is one of the greatest inconveniences of a democracy.

"It is not at all necessary that the representatives, who have received a general instruction from their electors, should wait to be particularly instructed on every affair, as is practised in the diets of Germany. True it is that, by this way of proceeding, the speeches of the deputies might, with greater propriety, be called the voice of the nation. But, on the other hand, this would throw them into infinite delays; would give each deputy a power of controlling the assembly; and, on the most urgent and pressing occasions, the springs of the nation might be stopped by a single caprice."

HARRINGTON.

In searching for the principles of government, we may divide them into two kinds; the principles of authority and the principles of power. The first are virtues of the mind and heart, such as wisdom, prudence, courage, patience, temperance, justice, &c. The second are the goods of fortune, such as riches, extraction, knowledge, and reputation. I rank knowledge among the goods of fortune, because it is the effect of education, study, and travel, which are either accidents, or usual effects of riches or birth, and is by no means necessarily connected with wisdom or virtue; but, as it is universally admired and respected by the people, it is clearly a principle of power. The same may be said of reputation, which, abstracted from all consideration whether it is merited or not, well, or ill-founded, is another source of power.

Riches will hold the first place, in civilized societies, at least, among the principles of power, and will often prevail, not only over all the principles of authority, but over all the advantages of birth, knowledge, and fame. For, as Harrington says, "Men are hung upon riches; not of choice, as upon the other, but of necessity, and by the teeth. Forasmuch as he who wants bread, is his servant that will feed him; and if a man thus feeds a whole people, they are under his empire." It already appears, that there must be in every society of men superiors and inferiors, because God has laid in the constitution and course of nature the foundations of the distinction. And, indeed, as Har-

rington says, "an army may as well consist of soldiers without officers, or of officers without soldiers, as a commonwealth consist of a people without a gentry, or of a gentry without a people."

"Let states take heed," says Lord Bacon, "how their nobility and gentlemen multiply too fast, for that makes the common subject grow to be a peasant and base swain driven out of heart, and, in effect, but a gentleman's laborer. How shall the plough, then, be kept in the hands of the owners, and not mere hirelings? how shall the country attain to the character which Virgil gives of ancient Italy, *Terra potens armis, atque ubere gleba?* how, but by the balance of dominion or property?"

Notwithstanding M. Turgot's aversion to balances, Harrington discovered, and made out, as Toland, his biographer, informs us, that "empire follows the balance of property, whether lodged in one, a few, or many hands." A noble discovery, of which the honor solely belongs to him, as much as the circulation of the blood to Harvey, printing to Laurence Coster, or the invention of guns, compasses, or optic glasses to the several authors. If this balance is not the foundation of all politics, as Toland asserts, it is of so much importance, that no man can be thought a master of the subject, without having well weighed it. M. Turgot, it is plain, had not the least idea of it.

"Tillage," says Harrington, "bringing up a good soldiery, brings up a good commonwealth; for, where the owner of the plough comes to have the sword too, he will use it in defence of his own. Whence it has happened, that the people of England, in proportion to their property, have been always free; and the genius of this nation has ever had some resemblance with that of ancient Italy, which was wholly addicted to commonwealths, and where Rome came to make the greatest account of her rustic tribes, and to call her consuls from the plough. For, in the way of parliaments, which was the government of this realm, men of country lives have been still entrusted with the greatest affairs, and the people have constantly had an aversion to the ways of the court. Ambition, loving to be gay and to fawn, has been a gallantry looked upon as having something in it of the livery; and husbandry, or the country way of life, though of a grosser spinning, as the best stuff of a commonwealth, according to Aristotle, such a one being the most obstinate assertress of her

liberty, and the least subject to innovation or turbulency. Commonwealths, upon which the city life has had the stronger influence, as Athens, have seldom or never been quiet; but, at the best are found to have injured their own business by overdoing it. Whence, the Urban tribes of Rome, consisting of the *turba forensis*, and *libertins*, that had received their freedom by manumission, were of no reputation in comparison of the rustics. A commonwealth, consisting of but one city, would doubtless be stormy, in regard that ambition would be every man's trade; but where it consists of a country, the plough in the hands of the owner finds him a better calling, and produces the most innocent and steady genius of a commonwealth.

"Domestic empire is founded upon dominion, and dominion is property, real or personal; that is to say, in lands, or in money and goods. Lands, or the parcels of a territory, are held by the proprietor or proprietors of it in some proportion; and such, (except it be in a city that has little or no land, and whose revenue is in trade,) as is the proportion or balance of dominion or property in land, such is the nature of the empire. If one man be sole landlord of a territory, or overbalance the people — for example, three parts in four — he is grand signior; for so the Turk is called from his property; and his empire is absolute monarchy. If the few, as a nobility and clergy, be landlords, or overbalance the people to the like proportion, it makes the Gothic balance, and the empire is mixed monarchy, as that of Spain, Poland, and once of England; and if the whole people be landlords, or hold the lands so divided among them, that no one man, or number of men, within the compass of the few, or aristocracy, overbalance them, the empire is a commonwealth.

"If force be interposed in any of these three cases, it must either frame the government to the foundation, or the foundation to the government; or, holding the government not according to the balance, it is not natural, but violent; and, therefore, if it be at the devotion of a prince, it is tyranny; if, at the devotion of the few, oligarchy; or if in the power of the people, anarchy. Each of which confusions, the balance standing otherwise, is but of short continuance, because against the nature of the balance; which not destroyed, destroys that which opposes it." *Oceana*, p. 37.

Here, it would be entertaining to apply these observations to

the force of fleets and armies, &c., applied by Great Britain in the late contest with America. The balance of land, especially in New England, where the force was first applied, was neither in the king nor a nobility, but immensely in favor of the people. The intention of the British politicians was to alter this balance, "frame the foundation to the government, by bringing the lands more and more into the hands of the governors, judges, counsellors, &c. &c., who were all to be creatures of a British ministry." We have seen the effects. The balance destroyed that which opposed it.

Harrington proceeds, — "But there are certain other confusions, which being rooted in the balance, are of longer continuance and of worse consequence; as, first, where a nobility holds half the property, or about that proportion, and the people the other half; in which case, without altering the balance, there is no remedy, but the one must eat out the other; as the people did the nobility in Athens, and the nobility the people in Rome. Secondly, when a prince holds about half the dominion, and the people the other half, which was the case of the Roman emperors, (planted partly upon their military colonies, and partly upon the senate and the people,) the government becomes a very shambles, both of the princes and the people. It being unlawful in Turkey that any should possess land but the grand signior, the balance is fixed by the law, and that empire firm. Nor, though the kings often fell, was the throne of England known to shake, until the statute of alienations broke the pillars, by giving way to the nobility to sell their estates. While Lacedæmon held to the division of land made by Lycurgus, it was immovable; but, breaking that, could stand no longer. This kind of law, fixing the balance in lands, is called agrarian, and was first introduced by God himself, who divided the land of Canaan to his people by lot.

"The public sword, without a hand to hold it, is but cold iron. The hand which holds this sword is the militia of a nation; and the militia of a nation is either an army in the field, or ready for the field upon occasion. But an army is a beast that has a great belly, and must be fed; wherefore this will come to what pastures you have, and what pastures you have will come to the balance of property, without which the public sword is but a name. He that can graze this beast with the great belly, as the

Turk does his timariots, may well deride him that imagines he received his power by covenant. But if the property of the nobility, stocked with their tenants and retainers, be the pasture of that beast, the ox knows his master's crib; and it is impossible for a king, in such a constitution, to reign otherwise than by covenant; or, if he breaks it, it is words that come to blows.

"Aristotle is full of this balance in divers places, especially where he says that immoderate wealth, as where one man, or the few, have greater possessions than the equality or the frame of the commonwealth will bear, is an occasion of sedition, which ends, for the greater part, in monarchy; and that, for this cause, the ostracism has been received in divers places, as in Argos and Athens; but that it were better to prevent the growth in the beginning, than, when it has got head, to seek the remedy of such an evil.

" Machiavel, not perceiving that if a commonwealth be galled by the gentry, it is by their overbalance, speaks of the gentry as hostile to popular governments, and of popular governments as hostile to the gentry; which can never be proved by any one example, unless in civil war; seeing that, even in Switzerland, the gentry are not only safe, but in honor. But the balance, as I have laid it down, though unseen by Machiavel, is that which interprets him, where he concludes, — 'That he who will go about to make a commonwealth where there be many gentlemen, unless he first destroys them, undertakes an impossibility. And that he who goes about to introduce monarchy, where the condition of the people is equal, shall never bring it to pass, unless he cull out such of them as are the most turbulent and ambitious, and make them gentlemen or noblemen, not in name, but in effect; that is, by enriching them with lands, castles, and treasures, that may gain them power among the rest, and bring in the rest to dependence upon them; to the end that they, maintaining their ambition by the prince, the prince may maintain his power by them.'

" Wherefore, as in this place I agree with Machiavel, that a nobility or gentry overbalancing a popular government, is the utter bane and destruction of it, so I shall show in another, that a nobility or gentry, in a popular government, not overbalancing it, is the very life and soul of it.

" The public sword, or right of the militia, be the government

what it will, or let it change how it can, is inseparable from the overbalance in dominion.

"The balance of dominion* in land is the natural cause of empire; and this is the principle which makes politics a science undeniable throughout, and the most demonstrable of any whatever. If a man, having one hundred pounds a year, may keep one servant, or have one man at his command, then, having one hundred times so much, he may keep one hundred servants; and this multiplied by a thousand, he may have one hundred thousand men at his command. Now, that the single person or nobility of any country in Europe, that had but half so many men at command, would be king or prince, is that which I think no man will doubt. But 'No money, no Swiss.' The reason why a single person or the nobility, that has one hundred thousand men, or half so many, at command, will have the government, is, that the estate in land, whereby they are able to maintain so many, in any European territory, must overbalance the rest that remains to the people, at least three parts in four. Now, for the same reason, if the people hold three parts in four of the territory, it is plain there can neither be any single person or nobility able to dispute the government with them. In this case, therefore, except force be interposed, they govern themselves. So that by this computation of the balance of property or dominion in the land, you have, according to the threefold foundation of property, the root or generation of the threefold kind of government or empire. If one man be sole landlord of a territory, or overbalance the whole people, three parts in four, or thereabouts, he is grand signior; for so the Turk, not from his empire, but his property, is called; and the empire, in this case, is absolute monarchy. If the few, or a nobility, or a nobility with a clergy, be landlords to such a proportion as overbalances the people in the like manner, they may make whom they please king; or, if they be not pleased with their king, down with him, and set up whom they like better; a Henry IV. or VII., a Guise, a Montfort, a Nevil, or a Porter, should they find that best for their own ends and purposes; for, as not the balance of the king, but that of the nobility, in this case, is the cause of the government, so not the estate of the prince or captain, but his

* *Prerogative of Popular Government*, c. iii. p. 226.

virtue or ability, or fitness for the ends of the nobility, acquires that command or office. This for aristocracy or mixed monarchy. But if the whole people be landlords, or hold the land so divided among them, that no one man or number of men, within the compass of the few or aristocracy overbalance them, it is a commonwealth. Such is the branch in the root, or the balance of property naturally producing empire."

Then follows a curious account of the laws in Israel against usury, and in Lacedæmon against trade, &c., which are well worth studying.

"That which, introducing two estates, causes division, or makes a commonwealth unequal, is not that she has a nobility, without which she is deprived of her most special ornament, and weakened in her conduct, but when the nobility only is capable of magistracy or of the senate; and where this is so ordered, she is unequal, as Rome. But where the nobility is no otherwise capable of magistracy, nor of the senate, than by election of the people, the commonwealth consists but of one order, and is equal, as Lacedæmon or Venice. Where the nobility holds half the property, or about that proportion, and the people the other half, the shares of the land may be equal; but, in regard the nobility have much among few, and the people little among many, the few will not be contented to have authority, which is all their proper share in a commonwealth, but will be bringing the people under power, which is not their proper share in a commonwealth; wherefore this commonwealth must needs be unequal; and, except by altering the balance, as the Athenians did by the rescission of debts, or as the Romans went about to do, by an agrarian, it be brought to such an equality that the whole power be in the people, and there remain no more than authority in the nobility, there is no remedy, but the one with perpetual feuds will eat out the other, as the people did the nobility in Athens, and the nobility the people in Rome. Where the carcass is, there will be the eagles also; where the riches are, there will be the power. So if a few be as rich as all the rest, a few will have as much power as all the rest; in which case the commonwealth is unequal, and there can be no end of staving and tailing till it be brought to equality." p. 254.

"The estates, be they one, or two, or three, are such as was

said by virtue of the balance upon which the government must naturally depend," exemplified in France, &c.

"All government is of three kinds, — a government of servants, a government of subjects, or a government of citizens. The first is absolute monarchy, as that of Turkey; the second, aristocratical monarchy, as that of France; the third, a commonwealth, as Israel, Rome, Holland. Of these, the government of servants is harder to be conquered and the easier to be held. The government of subjects is the easier to be conquered and the harder to be held. The government of citizens is both the hardest to be conquered and the hardest to be held.

" The reason why a government of servants is hard to be conquered, is, that they are under a perpetual discipline and command. Why a government of subjects is easily conquered, is on account of the factions of the nobility.

" The reasons why a government of citizens, where the commonwealth is equal, is hardest to be conquered, are, that the invader of such a society must not only trust to his own strength, inasmuch as, the commonwealth being equal, he must needs find them united; but in regard that such citizens, being all soldiers, or trained up to their arms, which they use not for the defence of slavery, but of liberty, a condition not in this world to be bettered, they have, more especially upon this occasion, the highest soul of courage, and, if their territory be of any extent, the vastest body of a well-disciplined militia that is possible in nature. Wherefore an example of such a one, overcome by the arms of a monarch, is not to be found in the world." p. 256.

In the art of lawgiving, chap. i. he enlarges still farther upon this subject; and instances Joseph's purchase of all the lands of the Egyptians for Pharaoh, whereby they became servants to Pharaoh; and he enlarges on the English balance, &c.

In America, the balance is nine tenths on the side of the people. Indeed, there is but one order; and our senators have influence chiefly by the principles of authority, and very little by those of power; but this must be postponed.

CHAPTER VI.

OPINIONS OF HISTORIANS.

My design is more extensive than barely to show the imperfection of M. Turgot's idea. This might be done in a few words and a very short process of reasoning; but I wish to assemble together the opinions and reasonings of philosophers, politicians, and historians, who have taken the most extensive views of men and societies, whose characters are deservedly revered, and whose writings were in the contemplation of those who framed the American constitutions. It will not be contested that all these characters are united in Polybius, who, in a fragment of his sixth book, translated by Edward Spelman, at the end of his translation of the *Roman Antiquities of Dionysius Halicarnassensis*, says, —

"It is customary, with those who professedly treat this subject, to establish three sorts of government, — kingly government, aristocracy, and democracy. Upon which one may very properly ask them, whether they lay these down as the only forms of government, or as the best; for in both cases they seem to be in an error; since it is manifest that the best form of government is that which is *compounded of all three.* This is founded not only in reason, but also in experience, Lycurgus having set the example of this form of government in the institution of the Lacedæmonian commonwealth." . . .

"Six kinds of government must be allowed, — kingly government and monarchy, aristocracy and oligarchy, democracy and the government of the multitude. . . .

"Lycurgus concluded that every form of government that is simple, by soon degenerating into that vice that is allied to it, must be unstable. The vice of kingly government is monarchy; that of aristocracy, oligarchy; that of democracy, rage and violence; into which, in process of time, all of them must degenerate. Lycurgus, to avoid these inconveniences, formed his government not of one sort, but united in one all the advantages and properties of the best governments; to the end that no

branch of it, by swelling beyond its due bounds, might degenerate into the vice which is congenial to it; and that, while each of them were mutually acted upon by *opposite powers*, no one part might incline any way, or *outweigh* the rest; but that the commonwealth being equally *poised* and *balanced*, like a *ship* " or a *wagon*," acted upon by *contrary powers*, might long remain in the same situation; while the king was restrained from excess by the fear of the people, who had a proper share in the commonwealth; and, on the other side, the people did not dare to disregard the king, from their fear of the senate, who, being all elected for their virtue, would always incline to the justest side; by which means, that branch which happened to be oppressed became always superior, and, by the accessional weight of the senate, *outbalanced* the other. This system preserved the Lacedæmonians in liberty longer than any other people we have heard of ever enjoyed it.

"All the three principal orders of government were found in the Roman commonwealth; every thing was constituted and administered with that equality and propriety by these three, that it was not possible, even for a Roman citizen, to assert positively, whether the government, in the whole, was aristocratical, democratical, or monarchical. For, when we cast our eyes on the power of the consuls, the government appeared entirely monarchical and kingly; when on that of the senate, aristocratical; and when any one considered the power of the people, it appeared plainly democratical.

" The consuls, when they are at Rome, and before they take the field, have the administration of all public affairs; for all other magistrates obey them, except the tribunes of the people. They introduce ambassadors into the senate. They also propose to the senate those subjects of debate that require immediate despatch; and are solely intrusted with the execution of their decrees. To them belongs the consideration of all public affairs of which the people have cognizance; whom they are to assemble upon all occasions, and lay before them the decrees of the senate, then pursue the resolutions of the majority. They have almost an absolute power in every thing that relates either to the preparations of war, or to the conduct of it in the field; for they may give what orders they please to their allies, and appoint the tribunes; they may raise forces, and enlist those

who are proper for the service. They also have power, when in the field, of punishing any who serve under them; and of expending as much as they please of the public money, being always attended by a quæstor for that purpose, whose duty it is to yield a ready obedience to all their commands. So that whoever casts his eyes on this branch may with reason affirm, that the government is merely monarchical and kingly.

"The senate have, in the first place, the command of the public money. For they have the conduct of all receipts and disbursements; since the quæstors cannot issue money for any particular service without a decree of the senate, except those sums they pay by the direction of the consuls. The senate have also the power over all disbursements made by the censors, every fifth year, in erecting and repairing public buildings; takes cognizance of all crimes committed in Italy, such as treasons, conspiracies, poisonings, and assassinations; sends embassies out of Italy to reconcile differences, use exhortations, signify commands, admit alliances, or declare war; determines when ambassadors come to Rome, in what manner they are to be treated, and the answer to be given them. For these reasons, when a foreigner comes to Rome, in the absence of the consuls, the government appears to him purely aristocratical.

"There is still a share in the government left for the people, and that the most considerable. They only have the power of distributing honors and punishments, to which alone both monarchies and commonwealths, and, in a word, all human institutions, owe their stability. For, wherever the difference between rewards and punishments is not understood, or injudiciously applied, there nothing can be properly administered, since the worthy and unworthy are equally honored!

"They often take cognizance of those causes where the fine is considerable, if the criminals are persons who have exercised great employments; but in capital cases they alone have jurisdiction; and a custom prevails with them, to give those who are tried for their lives a power of departing openly to voluntary banishment.

"They have the power of conferring the magistracy upon those they think worthy of it, which is the most honorable reward of merit any government can bestow.

"They have the power of rejecting and confirming laws, and

determine concerning peace and war, alliances, accommodations, and conventions.

" So that, from hence again, one may with reason assert, that the people have the greatest share in the government, and that the commonwealth is democratical.

" These orders, into which the commonwealth is divided, have the power to oppose, assist, and balance each other, as occasion may require.

" Though the consul, at the head of his army in the field, seems to have an absolute power to carry every thing he proposes into execution; yet he still stands in need of the people and senate, and without their assistance can effect nothing; for, neither corn, clothes, nor pay can be furnished to the army without the consent of the senate; who have also the power of sending another general to succeed him, as soon as the year is expired, or of continuing him in the command. Again, they may either magnify and extol, or obscure and extenuate, the victories of the generals; for these cannot celebrate their triumphs, unless the senate consents to it, and furnishes the necessary expense.

"As the power of putting an end to the war is in the *people*, the generals are under a necessity of having their approbation, who have the right of ratifying and annulling all accommodations and conventions. It is to the people that the generals, after the expiration of their command, give an account of their conduct; so that it is by no means safe for them to disregard the favor either of the senate or of the people.

" The senate is under a necessity of showing a regard to the people, and of aiming at their approbation; as, not having the power to punish crimes of the first magnitude with death, unless the people confirm the previous decree. If a law is proposed, by which part of the power of the senate is to be taken away, their dignities abolished, or even their fortunes diminished, the people have it in their power either to receive or reject it. If one of the tribunes of the people opposes the passing of a decree, the senate are so far from being able to enact it, that it is not even in their power to consult or assemble at all. For all these reasons, the senate stands in awe of the people.

" The people, also, are subject to the power of the senate, and under an obligation of cultivating the good-will of all the senators, who have many opportunities both of prejudicing and ad-

vantaging individuals. Judges are appointed out of the senate in most causes that relate to contracts, public or private. There are many rivers, ports, gardens, mines, and lands, and many works relating to erecting and repairing public buildings, let out by the censors, under the care of the senate; all these are undertaken by the people; some are purchasers, others partners, some sureties for the contracts. All these things are under the control of the senate, which has power to give time, to mitigate, and, if any thing has happened to render the performance of the contract impracticable, to cancel it. The people, thus dependent on the senate, and apprehending the uncertainty of the occasions in which they may stand in need of their favor, dare not resist or oppose their will.

"In like manner, they are not easily brought to obstruct the designs of the consuls; because all of them in general, and every one in particular, become subject to their authority, when in the field.

"Such being the power of each order to hurt and assist each other, their union is adapted to all contingencies, and *it is not possible to invent a more perfect system.* When the common fear of a foreign enemy compels them to act in concert, such is the strength of the government, that nothing necessary is omitted, or comes too late, since all vie with each other in directing their thoughts to the public good, and their endeavors to carry their designs into execution. The commonwealth, from the peculiar frame of it, becomes irresistible, and attains whatever it proposes.

"When, in consequence of victory, they live in prosperity and affluence, enjoying their good fortune free from the fear of a foreign enemy, they grow, through ease and flattery, insolent and proud; their commonwealth is then chiefly observed to relieve itself. For, when any branch of it becomes ambitious, and, swelling beyond its bounds, aims at unwarrantable power, being subject to the control of the other two, it cannot run into any excess of power or arrogance; but all three must remain in the terms prescribed by the constitution."

Thus, my dear sir, you see that Polybius's opinion of different orders, checks, and balances, in a commonwealth, is very different from that of M. Turgot. The Roman constitution formed the noblest people and the greatest power that has ever existed.

But if all the powers of the consuls, senate, and people had been centred in a single assembly of the people, collectively or representatively, will any man pretend to believe that they would have been long free, or ever great?

The distribution of power was, however, never accurately or judiciously made in that constitution. The executive was never sufficiently separated from the legislative, nor had these powers a control upon each other defined with sufficient accuracy. The executive had not power to interpose and decide between the people and the senate.

As we advance, we may see cause to differ widely from the judgment of Polybius, '*that it is impossible to invent a more perfect system of government.*' We may be convinced that the constitution of England, if its balance is seen to play, in practice, according to the principles of its theory; that is to say, if the people are fairly and fully represented, so as to have the power of *dividing or choosing*, of *drawing up hill or down*, instead of being disposed of by a few lords, is a system much more perfect. The constitutions of several of the United States, it is hoped, will prove themselves improvements both upon the Roman, the Spartan, and the English commonwealths.

The generation and corruption of governments, which may, in other words, be called the progress and course of human passions in society, are subjects which have engaged the attention of the greatest writers; and whether the essays they have left us were copied from history, or wrought out of their own conjectures and reasonings, they are very much to our purpose, to show the utility and necessity of different *orders* of men, and of an *equilibrium* of powers and privileges. They demonstrate the corruptibility of every species of simple government, by which I mean a power without a check, whether in one, a few, or many. It might be sufficient to show this tendency in simple democracy alone, for such is the government of one assembly, whether of the people collectively or representatively; but, as the generation and corruption of all kinds of government have a similitude with one another, and proceed from the same qualities in human nature, it will throw the more light upon our subject, the more particularly we examine it. I shall confine myself chiefly to the writings of Plato, Polybius, and Sir Thomas Smith.

Polybius thinks it manifest, both from reason and experience,

that the best form of government is not simple, but compounded, because of the tendency of each of the simple forms to degenerate. Even democracy, in which it is an established custom to worship the gods, honor their parents, respect the elders, and *obey the laws*, has a strong tendency to change into a government where the multitude have a power of doing whatever they desire, and where insolence and contempt of parents, elders, gods, and laws soon succeed.

"From whence do governments originally spring? From the weakness of men, and the consequent necessity to associate; and he who excels in strength and courage, gains the command and authority over the rest; as among inferior animals, who are not influenced by opinion, the strongest are, by common consent, allowed to be masters. This is monarchy. But when the nation, by living together, acquire some tincture of honor and justice, gratitude, duty, and their opposites; and the monarch countenances these moral qualities, and treats every one according to his merit, they are no longer afraid of violence, but submit to him, and unite in supporting his government, although he may again become weak and advanced in years. By this means, a monarch insensibly becomes a king, that is, when the power is transferred from courage and strength to reason. This is the origin of true *kingly government;* for the people preserve the command, not only to them, but to their descendants, being persuaded, that those who have received their birth and education from such men will resemble them also in their principles. But if they are dissatisfied with their descendants, they then choose magistrates and kings with regard only to superior sense and reason, and not to bodily strength and courage; having, by experience, been convinced of the difference between them. Those who were once chosen, and invested with the royal dignity, grew old in the enjoyment of it, possessed themselves of a territory, surrounded it with walls, and fortified advantageous posts; thus consulting the security of their subjects, and supplying them with plenty of provisions, differing little in their clothes or table from the people with whom they passed their lives, they continued blameless and unenvied. But their posterity, succeeding to the government by right of inheritance, and finding every thing provided for security and support, they were led by superfluity to indulge their appetites, and to imagine that it became princes to appear in a dif-

ferent dress, to eat in a more luxurious manner, and enjoy, without contradiction, the forbidden pleasures of love. The first produced envy, the other resentment and hatred. By which means kingly government degenerated into tyranny.

"At the same time a foundation was laid, and a conspiracy formed, for the destruction of those who exercised it; the accomplices of which were, not men of inferior rank, but persons of the most generous, exalted, and enterprising spirit; for such men can least bear the insolence of those in power. The people, having these to lead them, and uniting against their rulers, kingly government and monarchy were extirpated, and aristocracy began to be established.

"For the people, as an immediate acknowledgment to those who had destroyed monarchy, chose these leaders for their governors, and left all their concerns to them. These, at first, preferred the advantage of the public to all other considerations, and administered all affairs, both public and private, with care and vigilance. But their sons, having succeeded them in the same power, unacquainted with evils, strangers to civil equality and liberty, educated from their infancy in the splendor of the power and dignities of their parents, some giving themselves up to avarice, others to intemperance, and others to the abuse of women, by this behavior changed *the aristocracy into an oligarchy.*

"Their catastrophe became the same with that of the *tyrants;* for, if any person, observing the general envy and hatred which these rulers have incurred, has the courage to say or do any thing against them, he finds the whole body of the people inspired with the same passions they were before possessed with against the tyrant, and ready to assist him. Thereupon, they put some of them to death, and banish others; but dare not, after that, appoint a king to govern them, being still afraid of the injustice of the first. Neither dare they intrust the government with any number of men, having still before their eyes the errors which those had before committed. So that, having no hope but in themselves, they convert the government from an *oligarchy to a democracy*, and take upon themselves the care and charge of public affairs.

"And as long as any are living who felt the power and dominion of the *few*, they acquiesce under the present establishment, and look upon equality and liberty as the greatest of blessings.

But when a new race of men grows up, these, no longer regarding equality and liberty, from being accustomed to them, aim at a greater share of power than the rest, particularly those of the greatest fortunes, who, grown now ambitious, and being unable to attain the power they aim at by their own merit, dissipate their wealth in alluring and corrupting the people by every method; and when, to serve their wild ambition, they have once taught them to receive bribes and entertainments, from that moment the democracy is at an end, and changes to force and violence. For the people, accustomed to live at the expense of others, and to place their hopes of a support in the fortunes of their neighbors, if headed by a man of a great and enterprising spirit, will then have recourse to violence, and, getting together, will murder, banish, and divide among themselves the lands of their adversaries, till, grown wild with rage, they again find a master and a monarch.

"This is the rotation of governments, and this the order of nature, by which they are changed, transformed, and return to the same point of the circle.

"Lycurgus observing that all this was founded on necessity and the laws of nature, concluded that every form of government that is simple, by soon degenerating into that vice that is allied to it, and naturally attends it, must be unstable. For as rust is the natural bane of iron, and worms of wood, by which they are sure to be destroyed, so there is a certain vice implanted by the hand of nature in every simple form of government, and by her ordained to accompany it. The vice of kingly government is monarchy; that of aristocracy, oligarchy; and of democracy, *rage and violence;* into which all of them, in process of time, must necessarily degenerate. To avoid which, Lycurgus united in one all the advantages of the best governments, to the end that no branch of it, by swelling beyond its bounds, might degenerate into the vice that is congenial to it, and that, while each was mutually acted upon by *opposite powers*, no one part might outweigh the rest. The Romans arrived at the same end by the same means."

Polybius, you perceive, my dear sir, is more charitable in his representation of human nature than Hobbes, Mandeville, Rochefoucauld, Machiavel, Beccaria, Rousseau, De Lolme, or even than our friend Dr. Price. He candidly supposes that the first kingly

government will be wisely and honestly administered, during the life of the father of his people; that the first aristocracy will be conducted with caution and moderation, by the band of patriots to whom is due the glory of the expulsion of the tyrant; and that the people, for a generation at least, who have deposed the oligarchy, will behave with decorum.

But perhaps it might be more exactly true and natural to say, that the king, the aristocracy, and the people, as soon as ever they felt themselves secure in the possession of their power, would begin to abuse it.

In M. Turgot's single assembly, those who should think themselves most distinguished by blood and education, as well as fortune, would be most ambitious; and if they found an opposition among their constituents to their elections, would immediately have recourse to entertainments, secret intrigues, and every popular art, and even to bribes, to increase their parties. This would oblige their competitors, though they might be infinitely better men, either to give up their pretensions, or to imitate these dangerous practices. There is a natural and unchangeable inconvenience in all popular elections. There are always competitions, and the candidates have often merits nearly equal. The virtuous and independent electors are often divided; this naturally causes too much attention to the most profligate and unprincipled, who will sell or give away their votes for other considerations than wisdom and virtue. So that he who has the deepest purse, or the fewest scruples about using it, will generally prevail.

It is from the natural aristocracy in a single assembly that the first danger is to be apprehended in the present state of manners in America; and with a balance of landed property in the hands of the people, so decided in their favor, the progress to degeneracy, corruption, rage, and violence, might not be very rapid; nevertheless it would begin with the first elections, and grow faster or slower every year.

Rage and violence would soon appear in the assembly, and from thence be communicated among the people at large.

The only remedy is to throw the rich and the proud into one group, in a separate assembly, and there tie their hands; if you give them scope with the people at large or their representatives, they will destroy *all equality and liberty, with the consent and*

acclamations of the people themselves. They will have much more power, mixed with the representatives, than separated from them. In the first case, if they unite, they will give the law and govern all; if they differ, they will divide the state, and go to a decision by force. But placing them alone by themselves, the society avails itself of all their abilities and virtues; they become a solid check to the representatives themselves, as well as to the executive power, and you disarm them entirely of the power to do mischief.

DIONYSIUS OF HALICARNASSUS.

Dionysius Halicarnassensis, in his seventh book, has given us an excellent speech in the senate, made by Manlius Valerius, a man venerable for his age and wisdom, and remarkable for his constant friendship for the people.

"If any of you, fathers, are alarmed with an apprehension that you will introduce a pernicious custom into the commonwealth, if you grant the people a power of giving their suffrages against the patricians, and entertain an opinion that the tribunitian power, if considerably strengthened, will prove of no advantage, let them learn that their opinion is erroneous, and their imagination contrary to sound reasoning. For if any measure can tend to preserve this commonwealth, to assure both her liberty and power, and to establish a perpetual union and harmony in all things, the most effectual will be to give the people a share in the government; and the most advantageous thing to us will be, not to have a simple and unmixed form of government; neither a monarchy, an oligarchy, nor a democracy, but a constitution tempered with all of them; for each of these forms, when simple, very easily deviates into abuse and excess; but when all of them are *equally* mixed, that part which happens to innovate and to exceed the customary bounds, is always restrained by another that is sober, and adheres to the established order. Thus monarchy, when it becomes cruel and insolent, and begins to pursue tyrannical measures, is subverted by an oligarchy, consisting of good men; and an oligarchy, composed of the best men, which is your form of government, when, elated with riches and dependents, it pays no regard to justice or to any other virtue, is destroyed by a wise people. And in a democracy, when the

people, from being modest in their deportment, and observant of the laws, begin to run into disorders and excesses, they are forced to return to their duty by the power with which, upon those occasions, the best man of the commonwealth is invested.

"You, fathers, have used all possible precautions to prevent monarchical power from degenerating into tyranny; for, instead of a single person, you have invested two with the supreme power; and though you committed this magistracy to them, not for an indefinite time, but only for a year, you nevertheless appointed three hundred patricians, the most respectable both for their virtue and their age, of whom this senate is composed, to watch over their conduct; but you do not seem hitherto to have appointed any to watch over your own, and to keep you within proper bounds. As for yourselves, I am as yet under no apprehensions, lest you should suffer your minds to be corrupted by great and accumulated prosperity, who have lately delivered your country from a long tyranny; and, through continual and lasting wars, have not as yet had leisure to grow insolent and luxurious. But with regard to your successors, when I consider how great alterations length of time brings with it, I am afraid, lest the men of power in the senate should innovate, and silently transform our constitution to a monarchical tyranny.

Whereas, if you admit the people to a share in the government, no mischief can spring from the senate; but the man who aims at greater power than the rest of his fellow citizens, and has formed a faction in the senate of all who are willing to partake of his councils and his crimes, (for those who deliberate concerning public affairs ought to foresee every thing that is probable,) this great, this awful person, I say, when called upon by the tribunes to appear before the people, must give an account both of his actions and thoughts to this people, inconsiderable as they are, and so much his inferiors; and, if found guilty, suffer the punishment he deserves. And, lest the people themselves, when vested with so great a power, should grow wanton, and, seduced by the worst of demagogues, become dangerous to the best citizens, (for the multitude generally give birth to tyranny,) some person of consummate prudence, created dictator by yourselves, will guard against this evil, and not allow them to run into excess; and being invested with absolute power, and subject to no account, will cut off the infected part of the commonwealth,

and not suffer that which is not yet infected to be vitiated; reform the laws; excite the citizens to virtue, and appoint such magistrates as he thinks will govern with the greatest prudence. And having effected these things within the space of six months, he will again become a private man, without receiving any other reward for these actions than that of being honored for having performed them.

"Induced, therefore, by these considerations, and convinced that this is the most perfect form of government, debar the people from nothing; but as you have granted them a power of choosing the annual magistrates who are to preside over the commonwealth, of confirming and repealing laws, of declaring war, and making peace, which are the greatest and most important affairs that come under the consideration of our government, not one of which you have submitted to the absolute determination of the senate, allow them, in like manner, the power of trying offenders, particularly such as are accused of crimes against the state, of raising a sedition, of aiming at tyranny, of concerting measures with our enemies to betray the commonwealth, or of any other crimes of the like nature; for the more formidable you render the transgression of the laws and the alteration of discipline, by appointing many inspectors and many guards over the insolent and the ambitious, the more will your constitution be improved."

It is surprising that Valerius should talk of an equal mixture of monarchical, aristocratical, and democratical powers, in a commonwealth where they were so unequally mixed as they were in Rome. There can be no equal mixture without a negative in each branch of the legislature. But one example of an equal mixture has ever existed in Europe, and that is in England. The consuls in Rome had no negative; the people had a negative, but a very unequal one, because they had not the same time and opportunity for cool deliberation. The appointment of tribunes was a very inadequate remedy. What match for a Roman senate was a single magistrate seated among them? His abilities could not be equal; his firmness could not always be depended on. But, what is worse, he was liable to be intimidated, flattered, and bribed. It is really astonishing that such people as Greeks and Romans should ever have thought four or five ephori, or a single tribune, or a college of ten tribunes, an

adequate representation of themselves. If Valerius had proposed that the consul should have been made an integral part of the legislature, and that the Roman people should choose another council of two or three hundred, equally representing them, to be another integral part, he would then have seen that the appointment of a dictator could never, in any case, become necessary.

PLATO.

Plato has given us the most accurate detail of the natural vicissitudes of manners and principles, the usual progress of the passions in society, and revolutions of governments into one another.

In the fourth book of his Republic, he describes his perfect commonwealth, where kings are philosophers, and philosophers kings; where the whole city might be in the happiest condition, and not any one tribe remarkably happy beyond the rest; in one word, where the *laws govern*, and justice is established; where the guardians of the laws are such in reality, and preserve the constitution instead of destroying it, and promote the happiness of the whole city, not their own particularly; where the state is one, not many; where there are no parties of the poor and the rich at war with each other; where, if any descendant of the guardians be vicious, he is dismissed to the other classes, and if any descendant of the others be worthy, he is raised to the rank of the guardians; where education, the grand point to be attended to, produces good geniuses, and good geniuses, partaking of such education, produce still better than the former; where the children, receiving from their infancy an education agreeable to the laws of the constitution, grow up to be worthy men, and observant of the laws; where the system, both of laws and education, is contrived to produce the virtues of fortitude, temperance, wisdom, and justice, in the whole city, and in all the individual citizens; where, if among the rulers or guardians of the laws, there be one surpassing the rest, it may be called a monarchy, or kingly government; if there be several, an aristocracy.

Although there is but one principle of virtue, those of vice are infinite; of which there are four which deserve to be mentioned. There are as many species of soul as there are of republics, — five of each. That which is above described is one.

In the eighth book of his Republic he describes the other four, and the revolutions from one to another. The first he calls the Cretan or Spartan, or the *ambitious*[1] republic; the second *oligarchy;*[2] the third *democracy;* and the fourth *tyranny*, the last disease of a city.

"As republics are generated by the manners of the people, to which, as into a current, all other things are drawn, of necessity there must be as many species of men as of republics. We have already, in the fourth book, gone over that which we have pronounced to be good and just. We are now to go over the contentious and ambitious man, who is formed according to the Spartan republic; and then him resembling an oligarchy; then the democratic; and then the tyrannic man; that we may contemplate the most unjust man, and set him in opposition to the most just, that our inquiry may be completed! The ambitious republic is first to be considered. It is indeed difficult for a city constituted in this manner, that is, like Sparta, to be changed; but, *as every thing which is generated is liable to corruption, even such a constitution as this will not remain forever, but be dissolved.*"

I shall pass over all the astrological and mystical whimsies which we meet with so often in Plato, interspersed among the most sublime wisdom and profound knowledge, and insert only what is intelligible. The amount of what he says in this place about numbers and music is, that mistakes will insensibly be made in the choice of persons for guardians of the laws; and by these guardians, in the rewards and promotion of merit. "They will not always expertly distinguish the several species of genius, — the golden, the silver, the brazen, and the iron. Whilst iron shall be mixed with silver, and brass with gold, dissimilitude and discord arise, and generate war, and enmity, and sedition. When sedition is risen, two of the species of genius, the iron and brazen, will be carried away after gain, and the acquisition of lands and houses, gold and silver. But the golden and silver geniuses, as they are not in want, but naturally rich,

[1] *Τιμοκρατία,*
"Η τε ὑπὸ τῶν πολλῶν ἐπαινουμένη.
"That which is praised by many."

[2] *Συχνῶν γέμουσα κακῶν.*
"Full of many evils."

will lead the soul towards virtue and the original constitution. Thus divided, drawing contrary ways, and living in a violent manner, will not this republic be in the middle, between aristocracy and oligarchy, imitating, in some things, the former republic, and in others oligarchy? They will honor their rulers; their military will abstain from agriculture and mechanic arts; they will have common meals, gymnastic exercises, and contests of war, as in the former republic; but they will be afraid to bring wise men into the magistracy, because they have no longer any such as are truly simple and inflexible, but such as are of a mixed kind, more forward and rough, more fitted by their natural genius for war than peace, esteeming tricks and stratagems. Such as these shall desire wealth, and hoard up gold and silver, as those who live in oligarchies. While they spare their own, they will love to squander the substance of others upon their pleasures. They will fly from the law as children from a father, who have been educated not by persuasion but by force. Such a republic, mixed of good and ill, will be most remarkable for the prevalence of the contentious and ambitious spirit."

"What now shall *the man* be, correspondent to this republic? He will be arrogant and rough towards inferiors, mild towards equals, but extremely submissive to governors; fond of dignity and the magistracy, but thinking that political management and military performances, not eloquence, nor any such thing, should entitle him to them. While young, he may despise money; but the older he grows, the more he will value it, because he is of a covetous temper, and not sincerely affected to virtue and reason. Such an ambitious youth resembles such a city, and is formed somehow in this manner: — His father, a worthy man in an ill-regulated city, shuns honors, and magistracies, and law-suits, and all public business, that, as he can do no good, he may have no trouble. The son hears his mother venting her indignation, and complaining that she is neglected among other women, because her husband is not in the magistracy, nor attentive to the making of money; that he is unmanly and remiss, and such other things as wives are apt to whine about concerning husbands. The domestics, too, privately say the same things to the sons, stimulating them to be more of men than their father, and more attentive to their money. When they go abroad, they hear the same things, and see that those who mind their own

affairs are called simple, and such as mind not their affairs are commended. The young man, comparing the conduct, speeches, and pursuits of his father with those of other men, the one watering the rational part of his soul, and the other the concupiscible and irascible, he delivers up the government within himself to a middle power, that which is irascible and fond of contention, and so he becomes a haughty and ambitious man."

We have now the second republic, and the second man.

"This second republic will be succeeded by oligarchy, founded on men's valuations, in which the rich bear rule, and the poor have no share in the government. The change from the ambitious republic to oligarchy is made by that treasury which every one has filled with gold. For, first of all, they and their wives find out methods of expense, and to this purpose strain and disobey the laws, one observing and rivalling another, the generality become of this kind; and, proceeding to greater desires of making money, the more honorable they account this to be, the more will virtue be thought dishonorable. Virtue is so different from wealth, that they always weigh against each other. Whilst wealth and the wealthy are held in honor in the city, both virtue and the good must be more dishonored, and what is honored is pursued, and what is dishonored is neglected. Instead, then, of ambitious men, they will become lovers of gain. The rich they praise and admire, and bring into the magistracy; but the poor man they despise. They then make laws, marking out the boundary of the constitution, and regulating the quantity of oligarchic power according to the quantity of wealth; more to the more wealthy, and less to the less. So that he who hath not the valuation settled by law is to have no share in the government.

"What think you of this constitution? If we should appoint pilots according to their valuation, but never intrust a ship with a poor man, though better skilled in his art, we should make very bad navigation. Again, such a city is not one, but of necessity two; one, consisting of the poor, and the other of the rich, dwelling in one place, and always plotting against one another. They are, moreover, incapable to wage war, because of the necessity they are under, either of employing the armed multitude, and of dreading them more than the enemy, or to appear in battle, truly oligarchic, and at the same time be unwilling to advance money for the public service, through a natural disposition of covetousness.

"In such a government almost all are poor, except the governors; and where there are poor, there are somewhere concealed thieves and pursecutters and sacrilegious persons and workers of all other evils; these the magistracy with diligence and force restrains; these are drones in a city, with dangerous stings.

"This is oligarchy. Now let us consider the man who resembles it. The change from the ambitious to the oligarchic man is chiefly in this manner,—the ambitious man has a son who emulates his father and follows his steps; afterwards he dashes on the city, as on a rock, wasting his substance in the office of a general or some other principal magistracy; then falling into courts of justice, destroyed by sycophants, stripped of his dignities, disgraced, and losing all his substance. When he has thus suffered and lost his substance, in a terror he pushes headlong from the throne of his soul that ambitious disposition; and, being humbled by his poverty, turns to the making of money, lives sparingly and meanly, and applying to work, scrapes together substance. He then seats in that throne the avaricious disposition, and makes it a mighty king within himself, decked out with Persian crowns, bracelets, and sceptres. Having placed the virtuous and ambitious disposition low on the ground, he reasons on nothing but how lesser substance shall be made greater, admires and honors nothing but riches and rich people. This is the change from an ambitious youth to a covetous one, and this is the oligarchic man.

"Democracy is next to be considered, in what manner it arises, and what kind of man it produces when arisen. The change from oligarchy to democracy is produced through the insatiable desire of becoming as rich as possible. As those who are governors in it govern on account of their possessing great riches, they will be unwilling to restrain by law such of the youth as are dissolute, from having the liberty of squandering and wasting their substance; that so, by purchasing the substance of such persons, and lending them on usury, they may still become richer, and be held in greater honor. While they neglect education, and suffer the youth to grow licentious, they sometimes lay under a necessity of becoming poor, such as are of no ungenerous disposition. These sit in the city, some of them in debt, others in contempt, hating and conspiring against those who possess their substance, and with others very desirous of a

change. But the money-catchers, still brooding over it, and drawing to themselves exorbitant usury, fill the city with drones and poor. They neglect every thing but making of money, and make no more account of virtue than the poor do. When these governors and their subjects meet on the road, at public shows, in military marches, as fellow-soldiers or sailors, or in common dangers, the poor are by no means contemned by the rich. A robust fellow, poor and sunburnt, beside a rich man, bred up in the shade, swollen with flesh, and panting for breath, and in agony in battle, thinks it is through his own and his fellows' fault that such men grow rich, and says, Our rich men are good for nothing. The city soon grows into sedition between the oligarchic and democratic parties; and the poor prevailing over the rich, kill some and banish others, and share the places in the republic and the magistracies equally among the remainder, and for the most part the magistracies are disposed in it by lot. In what manner do these live, and what sort of republic is this? A democracy. The city is full of all freedom of action and speech, and liberty to do in it what any one inclines. Every one will regulate his own method of life in whatever way he pleases. In such a republic will arise men of all kinds. This is the finest of all republics, variegated like a robe with all kinds of flowers, and diversified with all sorts of manners. The multitude, it is likely, judge this republic the best, like children and women gazing at variegated things. In truth, it contains all kinds of republics, and it appears necessary for any one, who wants to constitute a city, as we do at present, to come to a democratic city, as to a general fair of republics, and choose the form that he fancies; he will not be in want of models. Is not this a sweet and divine manner of life for the present? To be under no necessity to govern, although you were able to govern; nor to be subject, unless you incline; nor to be engaged in war when others are; nor to live in peace when others do so, unless you be desirous of peace; and though there be a law restraining you from governing or administering justice, to govern nevertheless, and administer justice if you incline? Have you not observed, in such a republic, men condemned to death or banishment continuing still, or returning like heroes, and walking up and down openly, as if no one observed them? Is not this indulgence of the city very generous, in magnificently despising

all care of education and discipline, and in not regarding from what sort of pursuits one comes to act in public affairs, but honoring him, if he only say he is well affected towards the multitude? These things, and such as these, are to be found in a democracy; and it would be a pleasant sort of republic, anarchical and variegated, distributing a certain equality to all alike, without distinction.

"Let us consider now the character of a democratical man, and how he arises out of that parsimonious one who, under the oligarchy, was trained up by his father in his manners. Such a one by force governs his own pleasures, which are expensive, and tend not to making money, and are called unnecessary. Eating, so far as conduces to preserve life, health, and a good habit of body, is a pleasure of the necessary kind; but the desire of these things beyond these purposes, is capable of being curbed in youth; and, being hurtful to the body and to the soul, with reference to her attaining wisdom and temperance, may be called unnecessary. In the same manner we shall say of venereal desires and others. We just now denominated a drone the man who was full of such desires and pleasures; but the oligarchic man, him who was under the necessary ones. The democratic appears to arise from the oligarchic man in this manner.

When a young man, bred up without proper instruction, and in a parsimonious manner, comes to taste the honey of the drones, and associates with those vehement and terrible creatures, who are able to procure pleasures every way diversified, from every quarter; thence imagine there is the beginning of a change in him, from the oligarchic to the democratic. And as the city was changed by the assistance of an alliance from without, with one party of it, with which it was of kin, shall not the youth be changed in the same manner, by the assistance of one species of desires from without to another within him, which resembles it, and is akin to it? By all means. If any assistance be given to the oligarchic party within him, by his father or the others of his family admonishing and upbraiding him, then truly arises sedition and opposition and a fight within him with himself. Sometimes the democratic party yields to the oligarchic; some of the desires are destroyed, others retire on the rise of a certain modesty in the soul of the youth, and he is again rendered somewhat decent. Again, when some desires retire, there are others akin

to them which grow up, and, through inattention to the father's instructions, become both many and powerful, draw towards intimacies, and generate a multitude. They seize the citadel of the soul of the youth, finding it evacuated of noble learning and pursuits and of true reasoning, which are the best watchmen and guardians in the understandings of men beloved of the gods; and then false and boastful reasonings and opinions, rushing up in their stead, possess the same place in this person. These false and boastful reasonings, denominating modesty to be stupidity; temperance, unmanliness; moderation, rusticity; decent expense, illiberality; thrust them all out disgracefully, expel them their territories, and introduce insolence and anarchy, luxury and impudence, in triumph, with encomiums and applauses, shining with a great retinue, and crowned with crowns. Insolence they denominate education; anarchy, liberty; luxury, magnificence; and impudence, manhood. In this manner, a youth bred up with the necessary desires, changes into the licentiousness and remissness of the unnecessary and unprofitable pleasures; his life is not regulated by any order, but deeming it pleasant, free, and happy, he puts all laws whatever on a level; like the city, he is fine and variegated, and many men and women too would desire to imitate his life, as he hath in him a great many patterns of republics and of manners.

"It remains that we go over the most excellent republic, which is tyranny, and the most excellent man, who is the tyrant. The change is from democracy to tyranny, as from oligarchy to democracy. An insatiable desire of riches, and a neglect of other things, through attention to making money, destroys oligarchy; and an insatiable thirst of liberty destroys democracy. When a city is under a democracy, and is thirsting after liberty, and happens to have bad cup-bearers, and grows drunk with an insufficiently diluted draught of it, it punishes even the governors, if they will not be entirely tame, and afford a deal of liberty, accusing them as corrupted, and leaning towards oligarchy. Such as are obedient to magistrates are abused, as willing slaves and good for nothing. Magistrates who resemble subjects, and subjects who resemble magistrates, are commended and honored, both in public and private; in such a city they of necessity soon go to the highest pitch of liberty, and this inbred anarchy descends into private families. The father resembles

the child, and is afraid of his sons. The sons accustom themselves to resemble the father, and neither revere nor stand in awe of their parents. Strangers are equalled with citizens. The teacher fears and flatters the scholars, and the scholars despise their teachers and tutors. The youth resemble the more advanced in years, and rival them in words and deeds. The old men, sitting down with the young, are full of merriment and pleasantry, mimicking the youth, that they may not appear to be morose and despotic. The slaves are no less free than those who purchase them; and wives have a perfect equality and liberty with their husbands, and husbands with their wives. The sum of all these things, collected together, makes the souls of the citizens so delicate, that if any one bring near to them any thing of slavery, they are filled with indignation, and cannot endure it; and at length *they regard not the laws*, written or unwritten, that no one whatever, by any manner of means, may become their master. This is that government so beautiful and youthful, whence tyranny springs. But any thing in excess, in animal or vegetable bodies, in seasons or in republics, is wont to occasion a mighty change to the reverse; and excessive liberty seems to change into nothing but excessive slavery, both with a private person and a city. Thus licentiousness destroys the democracy.

"Out of no other republic is tyranny constituted but out of democracy; and out of the most excessive liberty, the greatest and most savage slavery. The race of idle and profuse men, one part of which was more brave, and were leaders, the other more cowardly, and followers, we compared to drones, the one with, and the other without stings. These two springing up in a republic, raise disturbance, as phlegm and bile in a natural body. Let us divide a democratic city into three, as it really is; for one such species as the above grows through licentiousness in it, no less than in the oligarchic, but is much more fierce. In oligarchy, because it is not in places of honor, but is debarred from the magistracies, it is unexercised, and does not become strong; but in a democracy this is the presiding party, excepting a few; and now it says and does the most outrageous things. Some other party is now always separated from the multitude; and while the whole are somehow in pursuit of gain, such as are the most temperate become the wealthiest, and have the greatest quantity of honey; hence the greatest quantity of honey, and what comes

with the greatest ease, is pressed out of these by the drones. Such wealthy people are the pasture of the drones. The people who mind their own affairs, and meddle not with any others, who have not much property, but yet are the most numerous and the most prevalent in democracy, *whenever it is fully assembled*, would be a third species; but it will not often fully assemble, if it does not get some share of the honey. It does, however, always get a share, for their leaders rob those who have substance, and give it to the people, that they may have the most themselves. These, then, who are thus despoiled, are obliged to defend themselves, saying and doing all they can among the people. Others, then, give them occasion to form designs against the people, and so they become oligarchic, even although they should have no inclination to introduce a change of government; thence they go to accusations, lawsuits, and contests, one with another, the leaders slandering and the drones stinging.

"The people are wont always to set some one in a conspicuous manner over themselves, to cherish him, and greatly to increase his power. Whenever a tyrant rises, it is from this root, and from nothing else, that he blossoms. What, then, is the beginning of a change, from a president into a tyrant? The wolf in the temple of Arcadia, dedicated to Lycæan Jupiter, had this inscription: "That whoever tasted human entrails, mixed with other sacrifices, necessarily became a wolf." In the same manner, he who, being president of the people, and receiving an extremely submissive multitude, abstaineth not from kindred blood, but unjustly accusing them, and bringing them into courts of justice, stains himself with bloodshed, and banishes and slays, and proposes the abolition of debts, and division of lands, must not such a one either be destroyed by his enemies, or exercise tyranny, and from being a man become a wolf? He now becomes seditious towards those who have substance, and when he fails, he goes against his enemies with open force, and becomes an accomplished tyrant; and if they be unable to expel him, or put him to death by an accusation before the city, they conspire to cut him off privately, by a violent death. On this account, all those who mount up to tyranny, invent the celebrated tyrannical demand of the people, certain guards for their persons, that the assistance of the people may be secured to them. The people, afraid of his safety, but secure as to their own, grant

them. Then those who have substance, and the crime of hating the people, fly; and if any one of them is caught he is put to death. This president of a city, thus not behaving like a truly great man, tumbles down many others, and sits in his chair a consummate tyrant, instead of a president of a city.

"Consider, now, the happiness of the man and the city in which such a mortal arises. In the first days, he smiles and salutes every one he meets; says he is no tyrant; promises many things, both in private and in public; frees from debts; distributes lands, both to the people in general, and those about him; affects to be mild, and of the patriot spirit, towards all. But when he has reconciled to himself some of his foreign enemies, and tranquillity is restored, he raises wars, that the people may want a leader, and that, being rendered poor by the payment of taxes, they may be under a necessity of becoming intent on a daily sustenance, and less ready to conspire against him. If he suspects any of them, who are of free spirits, will not allow him to govern, in order to have some pretext for destroying them, he exposes them to the enemy. On these accounts, a tyrant is always under a necessity of raising war. While he is doing these things, he must become more hateful to his citizens. Some of those who have been promoted along with him, and are in power, speak out freely, both to him and among themselves, finding fault with the transactions. It behoves the tyrant, then, to cut off all those who are of a more manly spirit, if he means to govern, till he leave no one, friend or foe, worth any thing. He must carefully observe who is courageous, magnanimous, wise, rich, and of necessity he must be an enemy to all these, and lay snares, until he cleanse the city of them. Thus he must live with wicked people, and be hated by them too, or not live at all. The more he is hated, the more guards he will want. But the worthy men being destroyed, the worst must be his guards. What a blessed possession! But this army of the tyrant, so beautiful, so numerous, and multiform, must be maintained. If there be any sacred things in the city, these they will spend, and the people obliged to pay the lighter taxes. When these fail, he and his drunken companions and associates, male and female, shall be maintained out of the paternal inheritance; and the people who have made the tyrant shall nourish him. If the people be enraged, and say that they did not make him to be slaves to his slaves, but that

they might be set at liberty from the rich in the city, who are now called good and worthy men, and order him and his companions to be gone out of the city, as a father drives out of his house his son, with his tumultuary, drunken companions; then, indeed, the people shall know what a beast they are themselves, and what a beast they have generated, hugged, and bred up. While they are the weaker, they attempt to drive out the stronger. The tyrant will strip them of their armor. The people, defending themselves against the smoke of slavery, have fallen into the fire of despotism; instead of that excessive and unseasonable liberty, embracing the most rigorous and wretched slavery of bondmen. Thus, to speak modestly, we have sufficiently shown how tyranny arises out of democracy, and what it is after it is risen.

"The tyrannical man, himself, remains yet to be considered, in what manner he arises out of the democratic, and what kind of man he is, and whether he is wretched or happy. Of those pleasures and desires which are not necessary, *some are repugnant to law.* These, indeed, appear to spring up in every one; but, being *chastised by the laws* and the better desires, along with reason, they either forsake some men altogether, or are less in number and feeble; in others they are in greater number and more powerful. These lawless desires are such as are excited in sleep, when the rational part of the soul which governs it is asleep, and the part which is brutal and savage, being filled with meats and drunkenness, frisks about, and, pushing away sleep, wants to go and accomplish its practices. In such a one, it dares to do every thing, as being loosed and disengaged from all modesty and discretion; for it scruples not the embraces, as it imagines, of gods, men, or beasts; nor to kill any one; in one word, is wanting in no folly nor impudence. There is in every one a certain species of desires, which is terrible, savage, and irregular, even in some who seem to us to be entirely moderate.

"Recollect, now, what kind of man we said the democratic one was; educated from his infancy under a parsimonious father, who valued the avaricious desires alone; but being afterwards conversant with those who are more refined, running into their manner, and all sort of insolence, from a detestation of his father's parsimony. However, having a better natural temper than those who corrupt him, and being drawn opposite ways, he

settles into a manner in the middle of both, and participating moderately, as he imagines, of each of them, he leads a life neither illiberal nor licentious, becoming a democratic man from an aristocratic. His son is educated in his manners; but the same things happening to him as to his father, he is drawn into all kinds of licentiousness, which is termed, however, by those who draw him off, the most complete liberty. His father, the domestics, and others, are aiding to those desires which are in the middle. But when the tyrant-makers have no hopes of retaining the youth in their power any other way, they contrive to excite in him a certain love, which presides over the indolent desires, and such as minister readily to their pleasures; and when other desires make a noise about him, full of their odors and perfumes, and crowns and wines, and the pleasures of the most dissolute kind, then, truly, he is surrounded with madness as a life-guard, and that president of the soul rages with frenzy, till he kills all modesty, is cleansed of temperance, and filled with additional madness. This is the formation of a tyrannical man. After this, there are feastings among them, and revellings, banqueting, and mistresses, and all such things as may be expected where the tyrant's love, drunkenness, and madness govern all in the soul. After this, there is borrowing and pillaging of substance, and searching for every thing which they are able, by rage and frenzy, deceit and violence, to carry off; pilfering and beguiling parents. When the substance of father and mother fails, he will break into houses, rob in the streets, rifle temples. Those desires which heretofore were only loose from their slavery in sleep, when he was yet *under the laws* and his father, when under democratic government, now, when he is tyrannized over by his passions, shall be equally loose when he is awake, and from no horrid slaughter or deed shall he abstain; but the tyrant within him, *living without any restraint of law and government*, shall lead him on to every mad attempt. Such as these establish as tyrant the man who among them hath himself most of the tyrant, and in greatest strength, within his own soul. If the city relucts, he shall bring in other young people, and chastise his formerly *beloved mother and father country*, as the Cretans say. But liberty and true friendship the tyrannic disposition never tasted. Let us finish then our worst man. He will be awake such as we described him asleep, and he who appears the most

wicked, shall really be the most wretched; as many men, as many minds; as city is to city, in regard to virtue and happiness, so will man be to man; kingly government is the best, and tyranny is the worst. No city is more wretched than that which is under tyranny, nor any more happy than that under regal power. Both the city and the tyrant shall be slavish, poor, timorous; and you will find more lamentations and groans, weepings and torments, than in any other city. *We should not merely conjecture about matters of such importance, but most thoroughly inquire into them, by reasoning of this kind, for the inquiry is concerning the most important matter, a good life and a bad.*

"Such private men as are rich, and possess many slaves, have this resemblance at least of tyrants, that they rule over many. If they live securely, and are not afraid of their domestics, it is because the whole city gives assistance to each particular man. But if a god should lift a man, his wife, and children, with fifty slaves, out of the city, and let them down in a desert, in what kind of fear would he be about himself, his wife, and children, lest they should be destroyed by the domestics!

"Such, and much worse is the tyrant in his tyrannical city; envious, faithless, cowardly, unjust, unfriendly, unholy, and a sink and breeder of all wickedness.

"Now tell me which is the first and which the last, as to happiness, the regal, the ambitious, the oligarchic, the democratic, and the tyrannic man and city. The best and justest is the happiest."

Let me add to the researches of Polybius and Plato, concerning the mutability of governments, those of Sir Thomas Smith, who, as he tells us, on the twenty-eighth of March, 1565, in the seventh of Elizabeth and fifty-first year of his age, was ambassador from that queen to the court of France, and then published, "The Commonwealth of England," not as Plato made his republic, Xenophon his kingdom of Persia, or Sir Thomas More his Utopia, feigned commonwealths, such as never were nor shall be, vain imaginations, fantasies of philosophers, but as England stood and was governed at that day.

In his seventh chapter and the two following he gives us his opinion of the origin of a kingdom, an aristocracy and democracy. The third he supposes to grow naturally out of the second, and the second out of the first, which originated in patri-

archal authority. But as there is nothing remarkable, either in favor of our system or against it, I should not have quoted the book in this place, but for the sake of its title. The constitution of England is in truth a republic, and has been ever so considered by foreigners, and by the most learned and enlightened Englishmen, although the word commonwealth has become unpopular and odious, since the unsuccessful and injudicious attempts to abolish monarchy and aristocracy, between the years 1640 and 1660.

Let me proceed then to make a few observations upon the Discourses of Plato and Polybius, and show how forcibly they prove the necessity of permanent laws, to restrain the passions and vices of men, and to secure to the citizens the blessings of society, in the peaceable enjoyment of their lives, liberties, and properties; and the necessity of different orders of men, with various and opposite powers, prerogatives, and privileges, to watch over one another, to balance each other, and to compel each other at all times to be real guardians of the laws.

Every citizen must look up to the laws, as his master, his guardian, and his friend; and whenever any of his fellow-citizens, whether magistrates or subjects, attempt to deprive him of his right, he must appeal to the laws; if the aristocracy encroach, he must appeal to the democracy; if they are divided, he must appeal to the monarchical power to decide between them, by joining with that which adheres to the laws; if the democracy is on the scramble for power, he must appeal to the aristocracy and the monarchy, which by uniting may restrain it. If the regal authority presumes too far, he must appeal to the other two. Without three divisions of power, stationed to watch each other, and compare each other's conduct with the laws, it will be impossible that the laws should at all times preserve their authority and govern all men.

Plato has sufficiently asserted the honor of the laws and the necessity of proper guardians of them; but has nowhere delineated the various orders of guardians, and the necessity of a balance between them. He has, nevertheless, given us premises from whence the absolute necessity of such orders and equipoises may be inferred; he has shown how naturally every simple species of government degenerates. The aristocracy, or ambitious republic, becomes immediately an oligarchy. What shall be

done to prevent it? Place two guardians of the laws to watch the aristocracy, — one, in the shape of a king, on one side of it; another, in the shape of a democratical assembly, on the other side. The aristocracy become an oligarchy, changes into a democracy. How shall it be prevented? By giving the natural aristocracy in society its rational and just weight, and by giving it a regal power to appeal to, against the madness of the people. Democracy becomes a tyranny. How shall this be prevented? By giving it an able, independent ally, in an aristocratical assembly, with whom it may unite against the unjust and illegal designs of any one man.

LOCKE.

Chimerical systems of legislation are neither new nor uncommon, even among men of the most resplendent genius and extensive learning. It would not be too bold to say, that some parts of Plato and Sir Thomas More are as wild as the ravings of Bedlam. A philosopher may be perfect master of Descartes and Leibnitz, may pursue his own inquiries into metaphysics to any length, may enter into the inmost recesses of the human mind, and make the noblest discoveries for the benefit of his species; nay, he may defend the principles of liberty and the rights of mankind with great abilities and success; and, after all, when called upon to produce a plan of legislation, he may astonish the world with a signal absurdity. Mr. Locke, in 1663, was employed to trace out a plan of legislation for Carolina; and he gave the whole authority, executive and legislative, to the eight proprietors, the Lords Berkley, Clarendon, Albemarle, Craven, and Ashley; and Messieurs Carteret, Berkley, and Colleton, and their heirs. This new oligarchical sovereignty created at once three orders of nobility; barons,[1] with twelve thousand acres of land; caciques, with twenty-four thousand, &c.; and landgraves, with eighty thousand. Who did this legislator think would live under his government?* He should have first created a

[1] Here are slight errors. The barony was a geographical division, and not a title. There were no barons in Mr. Locke's plan; and the landgraves had forty-eight, and not eighty, thousand acres assigned them.

* "It cannot be imagined that Mr. Locke considered this as the best plan of government, but that he was employed to lay out a plan of legislation, and was under the necessity of forming such a one as would best suit the oligarchical

new species of beings to govern, before he instituted such a government.

MILTON.

A MAN may be a greater poet than Homer, and one of the most learned men in the world; he may spend his life in defence of liberty, and be at the same time one of the most irreproachable moral characters; and yet, when called upon to frame a constitution of government, he may demonstrate to the world that he has reflected very little on the subject. There is a great hazard in saying all this of John Milton; but truth and the rights of mankind demand it. In his "*Ready and Easy Way to Establish a Free Commonwealth*," this great author says, "I doubt not but all ingenuous and knowing men will easily agree with me, that a free commonwealth, without single person or house of lords, is by far the best government, if it can be had; . . .

"For the ground and basis of every just and free government, is a general council of ablest men chosen by the people to consult of public affairs, from time to time, for the common good. In this grand council must the sovereignty, not transferred, but delegated only, and, as it were, deposited, reside; with this caution, they must have the forces by sea and land committed to them for preservation of the common peace and liberty; must raise and manage the public revenue, at least with some inspectors deputed for satisfaction of the people how it is employed; must make or propose civil laws, treat of commerce, peace, or war with foreign nations; and, for the carrying on some particular affairs with more secrecy and expedition, must elect, as they have already, out of their own number and others, a council of state.

"And although it may seem strange at first hearing, by reason that men's minds are prepossessed with the notion of successive parliaments, I affirm that the grand or general council, being well

views of the proprietors. A similar plan was formed by the late Lord Egmont for the settling the island of St. John, by which his nobles had almost an arbitrary power of punishing their dependents. And this being made by his lordship an inducement to an acquaintance of mine to go thither and carry with him a number of settlers, he answered that he had not, for his own part, any objection in possessing the power of whipping and scourging those who might be under him, but he doubted whether he should be able to get anybody to submit to it."

H.

chosen, should be perpetual; for so their business is, or may be, and ofttimes urgent; the opportunity of affairs gained or lost in a moment. The day of council cannot be set as the day of a festival; but must be ready always to prevent or answer all occasions. By this continuance they will become every way skilfullest, best provided of intelligence from abroad, best acquainted with the people at home and the people with them. The ship of the commonwealth is always under sail; they sit at the stern, and if they steer well, what need is there to change them, it being rather dangerous? Add to this, that the grand council is both foundation and main pillar of the whole state; and to move pillars and foundations, not faulty, cannot be safe for the building. I see not, therefore, how we can be advantaged by successive and transitory parliaments; but that they are much likelier continually to unsettle, rather than to settle a free government; to breed commotions, changes, novelties, and uncertainties; to bring neglect upon present affairs and opportunities, while all minds are in suspense with expectation of a new assembly, and the assembly, for a good space, taken up with the new settling of itself. . . . But if the ambition of such as think themselves injured, that they also partake not of the government, and are impatient till they be chosen, cannot brook the perpetuity of others chosen before them; or if it be feared that long continuance of power may corrupt sincerest men, the known expedient is, that annually, (or if the space be longer, so much perhaps the better,) the third part of senators may go out," &c.

Can one read, without shuddering, this wild reverie of the divine, immortal Milton? If no better systems of government had been proposed, it would have been no wonder that the people of England recalled the royal family, with all their errors, follies, and crimes about them. Had Milton's scheme been adopted, England would have been a scene of revolutions, carnage, and horror, from that time to this, or its liberties would have been at this hour the liberties of Poland, or the island would have been a province of France. What! a single assembly to govern England? an assembly of senators for life too? What! did Milton's ideas of liberty and free government extend no further than exchanging one house of lords for another, and making it supreme and perpetual? What! Cromwell, Ireton, Lambert, Ludlow, Waller, and five hundred others of all sects

and parties, one quarter of them mad with enthusiasm, another with ambition, a third with avarice, and a fourth of them honest men, a perpetual council to govern such a country! It would have been an oligarchy of decemvirs on the first day of its sitting; it would have instantly been torn with all the agitations of Venice, between the aristocracy and oligarchy, in the assembly itself. If, by ballots and rotations and a thousand other contrivances, it could have been combined together, it would have stripped the people of England of every shadow of liberty, and grown in the next generation a lazy, haughty, ostentatious group of palatines; but if they had fallen into divisions, they would have deluged the nation in blood, till one despot would have ruled the whole. John Milton was as honest a man as his nation ever bred, and as great a friend of liberty; but his greatness most certainly did not consist in the knowledge of the nature of man and of government, if we are to judge from this performance, or from "*The Present Means and Brief Delineation of a Free Commonwealth*," in his letter to General Monk.

HUME.

Americans in this age are too enlightened to be bubbled out of their liberties, even by such mighty names as Locke, Milton, Turgot, or Hume; they know that popular elections of one essential branch of the legislature, frequently repeated,* are the only possible means of forming a free constitution, or of preserving the government of laws from the domination of men, or of preserving their lives, liberties, or properties in security; they know, though Locke and Milton did not, that when popular elections are given up, liberty and free government must be given up. Upon this principle, they cannot approve the plan of Mr. Hume, in his "*Idea of a Perfect Commonwealth*." "Let all the freeholders of twenty pounds a year in the county, and all the householders worth five hundred pounds in the town parishes, meet annually in the parish church, and choose, by ballot, some freeholder of the county for their member, whom we shall call the county representative. Let the hundred county representatives, two days after their election, meet in the county town, and

* "Not less frequently than for every session."

choose by ballot, from their own body, ten county magistrates and one senator. There are, therefore, in the whole commonwealth, one hundred senators, eleven hundred county magistrates, and ten thousand county representatives; for we shall bestow on all senators the authority of county magistrates, and on all county magistrates the authority of county representatives. Let the senators meet in the capital, and be endowed with the whole executive power of the commonwealth; the power of peace and war, of giving orders to generals, admirals, and ambassadors, and, in short, all the prerogatives of a British king, except his negative. Let the county representatives meet in their particular counties, and possess the whole legislative power of the commonwealth; the greater number of counties deciding the question; and where these are equal, let the senate have the casting vote. Every new law must first be debated in the senate; and, though rejected by it, if ten senators insist and protest, it must be sent down to the counties. The senate, if they please, may join to the copy of the law their reasons for receiving or rejecting it," &c.

The senate, by the ballot of Venice or Malta, are to choose a protector, who represents the dignity of the commonwealth, and presides in the senate; two secretaries of state and a council of state, a council of religion and learning, a council of trade, a council of laws, a council of war, a council of the admiralty — each of five persons, all senators; and seven commissioners of the treasury.

If you compare this plan, as well as those of Locke and Milton, with the principles and examples, you will soon form a judgment of them; it is not my design to enlarge upon them. That of Hume is a complicated aristocracy, and would soon behave like all other aristocracies. It is enough to say that the representatives of the people may by the senators be deprived of a voice in the legislature; because the senate have their choice of sending the laws down, either to the county magistrates or county representatives. It is an ingenious device, to be sure, to get rid of the people and their representatives; besides that the delays and confusions would be endless, in sending the laws to be debated in as many separate commonwealths as there are counties. But the two decisive objections are, — 1. Letting the nobility or senate into the management of the executive power;

and 2. Taking the eyes of the people off from their representatives in the legislature. The liberty of the people depends entirely on the constant and direct communication between them and the legislature, by means of their representatives.

The improvements to be made in the English constitution lie entirely in the house of commons. If county members were abolished,[1] and representatives proportionally and frequently chosen in small districts, and if no candidate could be chosen but an established, long-settled inhabitant of that district, it would be impossible to corrupt the people of England, and the house of commons might be an immortal guardian of the national liberty. Instead of projects to abolish kings and lords, if the house of commons had been attended to, wild wars would not have been engaged in, nor countless millions thrown away, nor would there have remained an imperfection, perhaps, in the English constitution. Let the people take care of the balance, and especially their part of it. But the preservation of their peculiar part of it will depend still upon the existence and independence of the other two. The instant the other branches are destroyed, their own branch, their own deputies, become their tyrants.

1 "Why the county members should be abolished is not easy to say." S.
"The patriotic party which attempted to reform the constitution, thought the county members ought to be increased, and not abolished." H.
The preceding comments are illustrative of the difference which exists between the English and American way of viewing similar questions. To the former, the county representation is indicative of the popular sentiment. To the latter, it signifies an unequal rule of representation. That this is the reason of the author's objection is plain, from his proposal of a substitute, in "representatives proportionally chosen," &c.

CHAPTER VII.

ANCIENT DEMOCRATICAL REPUBLICS.

CARTHAGE.

In order to show the theory of Socrates, as reported by Plato, in a clearer light, and to be convinced that he has not exaggerated in his description of the mutability in the characters of men and the forms of government, we should look into the history of those ancient republics from whence he drew his observations and reasonings. Although it is probable that Greece was his principal theatre, yet we may reasonably suppose that Carthage and a multitude of other republics in Italy, besides that of Rome, were not unknown to him.

The history of Greece should be to our countrymen what is called in many families on the continent a *boudoir*, an octagonal apartment in a house, with a full-length mirror on every side, and another in the ceiling. The use of it is, when any of the young ladies, or young gentlemen if you will, are at any time a little out of humor, they may retire to a place where, in whatever direction they turn their eyes, they see their own faces and figures multiplied without end. By thus beholding their own beautiful persons, and seeing, at the same time, the deformity brought upon them by their anger, they may recover their tempers and their charms together. A few short sketches of the ancient republics will serve to show, not only that the *orders* we defend were common to all of them; but that the prosperity and duration of each was in proportion to the care taken to *balance* them; and that they all were indebted, for their frequent seditions, the rise and progress of corruption, and their decline and fall, to the imperfection of their orders, and their defects in the balance.

As there are extant no writings of any Carthaginian philosopher, statesman, or historian, we have no exact information concerning the form of their commonwealth, but what appears in a few hints of Greek and Roman authors. Their commerce and riches, their empire of the sea, and extensive dominion of two

thousand miles on the sea coast, their obstinate military contests with Rome, and the long duration of their government, prove both that their population and power were very great, and their constitution good; especially as, for the space of five hundred years, their tranquillity was never interrupted by sedition, nor their liberties attempted by the ambition of any of their citizens.

The national character was military, as well as commercial; and, although they were avaricious, they were not effeminate.

The monarchical power was in two suffetes, the aristocratical in the senate, and the democratical was held by the people in a body. These are said to have been nicely balanced, but we know not in what manner. The chief magistrates were annually elected by the people. The senators were elected too, and, although it is not certain, it is most probable, by the people; but it appears that three qualifications were indispensable in every senator, — birth, merit, and wealth. This last requisite rendered commerce honorable, even in the first of the patricians and senators themselves, and animated the commercial genius of the nation. This government, thus far, resembles those of the States of America, more than any other of the ancient republics, perhaps more than any of the modern; but when we inquire for the balance, it is not to be found. The suffetes had not more authority than Roman consuls; they had but a part of the executive, and none of the legislative power. Much of the executive and all the legislative was in the senate and people. The balance, then, could only be between these two. Now, it is impossible to balance two assemblies without introducing a third power; one or other will be most powerful, and, whichever it is, will continually scramble till it gets the whole. In fact, the people here had the whole as much as in any of our states; so that, while the citizens were uncorrupted and gave their votes honestly for suffetes and senators, all went well. And it is extremely remarkable that, with all their acknowledged eagerness for money, this people were so many centuries untainted with luxury and venality, and preserved their primitive frugality of manners and integrity in elections. As to the Roman accusations of insincerity, there is no more reason to believe them, than there would be to believe a Carthaginian who should retort the reproach. This, as well as other instances, may lead us to doubt the universality of the doctrine, that commerce corrupts manners.

There was another remarkable institution, that the senate should always be unanimous; and if any one senator insisted upon his own opinion against all the rest, there could be no decision, but by an appeal to the people. This, again, gave a strong democratical cast to the constitution. Such a tendency could only be balanced by the laws, which, requiring a large fortune for every senator and public officer, in order to support his dignity, and secure him against the temptations to corruption, confined the choice to the first families and abilities united. This was liable to great objection; because great abilities might often be possessed by men of obscure original and smaller property, who were thereby excluded. To this law, nevertheless, may be ascribed the duration of the republic.

Another remarkable check, which was, perhaps, the model from whence the Venetian inquisition was copied, was a committee of one hundred and four members of the senate appointed to watch the ambition of the great families. To this body all their admirals and generals were required to render an account of their conduct at the end of every year.

Out of this body were elected a sub-committee of five, who had very great power. Their office was for life; and they filled up their own vacancies out of the one hundred and four, and all the vacancies, even in the one hundred and four, out of the senate; they had the supreme tribunal of criminal jurisdiction. This power must have been terrible to all,—to the people, senate, and suffetes; yet it was the check which preserved the state from sedition and convulsions. It grew unpopular; and the law which at last made it annual and elective, probably laid the foundation of the ruin of the commonwealth, by changing the balance, and introducing the *dominatio plebis*. The balances in this, the most democratical republic of antiquity, contrived by the people themselves to temper their own power, are extremely remarkable. The suffetes represented, like the consuls at Rome, the majesty of the commonwealth, and had a share of executive authority; the council of five had criminal jurisdiction and inquisitorial power; the one hundred and four were a body chosen out of the senate, by the five, for their support; then comes the senate at large; and, last of all, the people at large. Here are five orders completely distinct, besides the necessary legal qualification of great wealth; yet all these checks, although they pre-

served the state five hundred years, could not prolong its period above seven hundred; because, after all, the balance was not natural nor effectual. The executive power was not separated from the legislative; nor the different parts of the legislature properly divided or balanced. Both the executive and judicial power were chiefly in legislative hands.

The noble families, thus secured in possession both of legislative and executive power, could not be restrained by all the ligaments which had been contrived to preserve the equipoise between them and the people. They divided into two factions, with the family of Hanno at the head of one, and that of Barcas of the other. They first attacked the council of five, whose power was unpopular, as well as odious to the nobles; then easily procured a law to make it annually elective, or, in other words, an instrument always in the hands of the prevailing faction, as such a small body, so changeable, must ever be; and, lastly, overturned the constitution. The Romans had all the advantage of these dissensions in the war, by which they finally destroyed their rival power so effectually, that scarce a trace of it remains to be seen, even in ruins. Their virtues were not extinguished to the last; and some of the greatest examples of patriotism and heroism were exhibited even in their expiring agonies.

ATHENS.

Cecrops, an Egyptian, conducted a colony that settled in Athens, and first engaged the wandering shepherds and hunters of Attica to unite in villages of husbandmen. Although the government of Egypt was an absolute monarchy, he found it necessary to establish his own upon a more limited plan.

The two rival families of Perseus and Pelops, anciently contended for the dominion of the Grecian peninsula. The fortune of the descendants of the latter prevailed, and their superior prosperity led them to persecute their enemies. The descendants of Hercules, who was a son of Jupiter by Alcmena, of the line of Perseus, were stripped of all their possessions, and driven into exile. After a series of misfortunes, Temenus, Cresphontes, and Aristodemus, descendants in the fifth degree from Hercules, conducted an expedition into Greece and conquered the whole country.

The governments of the little states of Greece in the first ages, though of no very regular and certain constitution, were all limited monarchies. When, therefore, the Heraclides possessed themselves of Peloponnesus, they established everywhere that hereditary limited monarchy, which was the only government assimilated to the ideas and temper of the age, and an equality among themselves. Those vigorous principles of aristocracy, and some traces of the spirit of democracy, which had always existed in the Grecian governments, began to ferment; and, in the course of a few ages, monarchy was everywhere abolished. The very name of king was proscribed; a republic was thought the only government to which it became men to submit; and the term *tyrant* was introduced to denote those who, in opposition to these new political principles, acquired monarchical authority. Absolute monarchy was unknown as a legal constitution. The title of king implied a superiority of lawful dignity and authority in one person, above all others, for their benefit, not a right of absolute power. Legislation was never within their prerogative.

A distinction of families into those of higher and lower rank obtained very early throughout Greece, and nowhere more than at Athens, where, by the constitution of Theseus, the Eupatridæ, or nobly born, formed a distinct order of the state with great privileges. Afterwards wealth became the principal criterion of rank, which amounted probably to the same thing, as the nobly born were generally most wealthy. Every citizen in every Grecian state was bound to military service, as in modern times, among the feudal kingdoms. It was natural that the rich should serve on horseback; and this was the origin of knighthood both in ancient and modern nations. Where the noble or the rich held all the power, they called their own government *aristocracy*, or government of the better sort, or *optimacy*, government of the best sort. The people allowed the appellation of aristocracy only to those governments where persons, elected by themselves for their merit, held the principal power. Democracy signified a government by all the freemen of the state or the people at large, forming in assembly the legal, absolute sovereign. But as this, above all others, was subject to irregularity, confusion, and absurdity, when unchecked by some balancing power lodged in fewer hands, it was called *ochlocracy*, or mob rule. Most of the

Grecian states had some mixture of two or more of these forms. The mixture of oligarchy and democracy, in which the former was superior, yet the latter sufficed to secure liberty and equal right to the people, might, according to Aristotle, be called aristocracy. That mixture where the democratic power prevailed, yet was in some degree balanced by authority lodged in steadier hands, is distinguished by that great author by the name of *polity*. An equal mixture of all three was never known in Greece, and, therefore, never obtained a distinct name in that language.

A war happened between the Athenians and Peloponnesians; the armies were encamped near each other, and the Delphian oracle was consulted. The answer of the Pythoness implied, that the Peloponnesians would be victorious, provided they did not kill the Athenian king. Codrus, disguising himself like a clown, with a fagot on his shoulder and a fork in his hand, determined to devote his life, entered the enemy's camp, and was killed. The Peloponnesian chiefs finding the body to be Codrus, and fearing the prophecy, withdrew their forces, and a peace ensued. Medon, the eldest son of Codrus, was lame; and bodily ability was held in so high rank in popular esteem, that his younger brother disputed the succession. Each had a powerful party; but the dispute brought forward a third, which was for abolishing the royalty, and having no king but Jupiter. Fatal dissensions were apprehended, when a declaration of the oracle was procured in favor of Medon; and it was amicably accommodated that Medon should be first magistrate, with the title of archon, but not king. Although the honor was to be hereditary, and the archon to be accountable to the assembly of the people for his administration, it was agreed that a colony should be sent to Asia Minor, under Nelius and Androclus, younger sons of Codrus. The most restless spirits joined in the migration, and no further materials for history remain for several generations.

From the period where Homer's history ceases, to that in which the first prose historians lived, a space of two hundred and fifty years, there is little light to be obtained. Twelve archons are named, who followed Medon by hereditary succession, and filled up three hundred years. On the death of Alcmæon, Charops was raised to the archonship, upon condition of holding it for ten years only. Six archons followed Charops, by appoint-

ment, for ten years; but on the expiration of the archonship of Eryxias, it was resolved that the office should be annual, and that there should be nine persons to execute it. They had not all equal dignity, nor the same functions; one represented the majesty of the state, and was usually called the *archon;* the second had the title of king, and was head of the church; the polemarch was third, and chief of military affairs. The other six had the title of thesmothetes; they presided as judges in ordinary courts of justice. The nine together formed the council of state. Here methinks I see the Polish nobles running down the king, or those of Venice the doge, and dividing the spoils of his prerogative among themselves. Legislation was in the assembly of the people; but the whole administration, civil, military, religious, and judiciary, was with the archons, who were commonly appointed by lot; but sometimes the assembly of the people interfered, and exercised the power of naming them. From the appointment of annual archons there was nothing but intestine troubles. That weight which, from earliest times, a few principal families possessed among the Attic people, and which was in a great degree confirmed to them by the constitution of Theseus, remained, amid all the turbulence of democracy, to a late period. Among those families the Alcmæonides, claiming some connection by blood with the perpetual archons and kings of the ancient Neleid line, were of great fame. Megacles, head of this family, was archon when Cylon, a man of a very ancient and powerful family, attempted to acquire the sovereignty of his country. He seized the citadel of Athens, with some troops he received from Theagenes, tyrant of Megara, whose daughter he had married. His vanity was excited not only by his birth and marriage, but his personal merit, having been victor in a chariot race at the Olympic games. The people ran to arms under their archons, and laid siege to the citadel. Cylon fled, and his party fled to the altars. They were promised pardon, but condemned and executed. This was an atrocious infidelity, and made the actors in it as odious, as it rendered Cylon and his party again popular and powerful.

The miseries of a fluctuating jurisprudence became insufferable, and all parties united at last in the resolution to appoint a lawgiver. Draco was raised to this important office; a man whose morals and integrity recommended him to the people, but

whose capacity was equal to no improvement in the political constitution, and to no greater invention for reforming the judicatures, than that of inflicting capital punishments in all offences; and the knowing ones had no other remedy than to get the oracle to pronounce that the laws of Draco were written in blood; an expression which struck the imagination and touched the heart, and, therefore, soon rendered this system unpopular.[1]

Salamis, perceiving the divisions at Athens, revolted, and allied itself to Megara. Several attempts to recover it having failed, the lower people, in opposition to their chiefs, carried a law, making it capital to propose a renewal of the enterprise Solon, of an ancient royal family, who had hitherto pursued nothing but literature and poetry, perceiving that this rash act of the populace began to give general disgust and repentance, especially to the young Athenians, ventured to lead the people to repeal it. He caused it to be reported that he was mad, and for some time kept his house; in this retirement he composed a poem, such as he thought would excite the multitude; then watching his opportunity, during an assembly of the people, he ran into the Agora like one frantic, mounted on a rock, and read his poem to the people. Some of his friends, who were in the secret, were present, and ready to wonder and applaud. The enthusiasm spread, the law was repealed, and an expedition sent under Solon's friends, which, being skilfully conducted, recovered the island. But the party of Cylon were still clamorous against the partisans of Megacles, for their breach of faith. Solon persuaded the accused to submit to a trial. They were condemned to banishment; but this punishment not being sufficient to appease the deity, the bones of those who had been executed were removed beyond the mountains.

During these troubles Salamis was retaken. Superstition now gained the ascendant; phantoms and omens were seen, and expiations and purifications were necessary. Epimenides, a Cretan philosopher, of great reputation for religious knowledge,

[1] Yet it seems clear that he discriminated in the moral nature of offences.

"The few fragments of the Draconian tables which have reached us, far from exhibiting indiscriminate cruelty, introduce, for the first time, into the Athenian law, mitigating distinctions in respect to homicide; founded on the variety of concomitant circumstances." Grote, *Hist. of Greece*, vol. iii. p. 102.

It is difficult also to account for the popularity the author of so unpopular a system is reputed to have enjoyed till his death.

and an intimate friend of Solon, was invited to superintend the religion of Athens. Epimenides was the ostensible director, but Solon concerted with him the various improvements in jurisprudence. By means of religious pomp, ceremony, sacrifices, and processions, he amused the people into some degree of order and suspension of their factions; but the tranquillity was not likely to be lasting. Three political parties existed, — one for democracy, composed of the landholders of the mountains; another for an aristocracy of the rich, consisting of the possessors of the plain; a third preferred a mixture of oligarchy and democracy, consisting of the inhabitants of the coast, and the most disinterested men. There was another division of the people, into the parties of the rich and the poor. Dangerous convulsions were so apprehended, that many sober men thought the establishment of a tyranny, in one, necessary to prevent greater evils. Solon's reputation for wisdom and integrity was universal; and, as he had friends in all parties, they procured the place of archon, with power to reform the constitution. His first object was to reconcile the rich with the poor; this he accomplished by lowering the interest without annulling the debt,[1] and by taking from the creditor the exorbitant powers over the person and family of the debtor. He found such a predilection for democracy in the minds of the citizens, that he preserved to every free Athenian his equal vote in the assembly of the people, which he made supreme in all cases, legislative, executive, and judicial. He had not, probably, tried the experiment of a democracy in his own family, before he attempted it in the city, according to the advice of Lycurgus; but was obliged to establish such a government as the people would bear, not that which he thought the best, as he said himself.

As the laws of Solon were derived from Crete and Egypt, were afterwards adopted by the Romans as their model, and have by them been transmitted to all Europe, they are a most interesting subject of inquiry; but it is not possible to ascertain

[1] The extent to which he went in his interference between the debtor and creditor, is a subject which, like almost every other connected with these times, has been much disputed. But the better opinion is, that the statement in the text is below the truth. He diminished the weight of the money of account more than a quarter part, and probably annulled, directly or indirectly, the mortgages on all lands. It may be doubted whether any more radical measure was ever adopted in legislation.

exactly which were his, which were those of Epimenides or Theseus, or what was, in fact, the constitution of Athens. The first inquiry is, who were citizens? By a poll that was taken in the time of Pericles, they were found to be fourteen thousand persons. By another, in the time of Demetrius Phalereus, they were twenty-one thousand. At the same time, there were ten thousand freemen, consisting of foreigners and freed slaves, and four hundred thousand souls in actual bondage, who had no vote in the assembly of the people. The persons, therefore, who shared the power being not a tenth part of the nation,[1] were excused from labor, in agriculture as well as manufactures, and had time for education; they were paid, too, for attendance on public affairs, which enabled the poorer citizens to attend their duty. This is one circumstance which rendered a government so popular practicable for a time. Another was, the division of Attica into tribes and boroughs, or districts, like the American counties, towns, and parishes, or the shires, hundreds, and tithings of England. The tribes, at first, were four, afterwards ten. Each tribe had its presiding magistrate, called *phylarchus*, analogous to the English Sheriff; and each borough, of which there were one hundred and seventy-four, its demarchus, like a constable or headborough. As the title of king was preserved to the high-priest, so the person presiding over the religion of each tribe was called *philobasileus*, king's friend, and was always appointed from among the nobly born, *eupatridæ*. Thus religion was always in the hands of the aristocratical part of the community. As the oracles and priests were held by the people in so much sacred veneration, the placing them, with all their splendid shows and rites, always in the power of the aristocratical families, or persons of best education, was as great a check to the democracy as can well be imagined. It should be here recollected, too, that almost all these *eupatridæ*, or nobles, among the Greeks, were believed to be descended from the gods, nearly or remotely. Nobility, as well as royalty, was believed of

[1] This subject has been since very carefully examined by Boeckh, in his work on *The Public Economy of Athens*, and he makes the number of citizens of Attica twenty thousand, in a population of half a million. Clinton comes to the same result. *Fast. Hell.* vol. ii. appendix, p. 477.

There are about the same number of citizens at this time, 1851, in Boston, with a population of one hundred and forty thousand; and the proportion is smaller there than in other parts of Massachusetts, and the free States generally.

divine right, because the gods and goddesses had condescended to familiar intercourse with women and men, on purpose to beget persons of a superior order to rule among nations. The superiority of priests and nobles was assumed and conceded with more consistency than it is in Poland, Switzerland, and Venice; and they must have had a proportional influence with the people.

Another check to this "authority in one centre," the nation, established by Solon, was countenanced by precedent introduced by Theseus, who divided the Attic people into three ranks. All magistrates were taken exclusively out of the first. Solon, by a new division, made four ranks, determined by property, and confined all magistracies to the first three. By this regulation, he excluded all those who had no will of their own, and were dependent on others; but by still allowing to the fourth, who were more numerous than all the others, their equal votes in the assembly of the people, he put all power into hands the least capable of properly using it; and, accordingly, these, by uniting, altered the constitution at their pleasure, and brought on the ruin of the nation. By these precautions, however, we see the anxiety of Solon to avail himself of every advantage of birth, property, and religion, which the people would respect, to balance the sovereign democracy. With the same view, he instituted a senate of one hundred persons out of each of the four tribes;[1] and this great council, to which he committed many of the powers of the archons, he hoped would have a weight which all the archons together had not been able to preserve. It was afterwards increased to

[1] The precise manner in which this body was formed is not clearly understood, and it has therefore given rise to much discussion. Niebuhr and some later writers maintain that the four Ionic tribes were exclusively of the class of Eupatridæ, in which case, the senate must have been purely aristocratic, and made still more so by the property qualifications superinduced by Solon. The weight of authority must be conceded to be against this construction. But, whether this be correct or not, the effect of an exclusive distinction granted to a well-defined portion of the community was very certainly in the end to create, if it did not merely confirm, an aristocracy. To form an idea of the effect of it, we have only to imagine what would now be the case had a similar exception been made in favor of the first Puritan families of Massachusetts, or of the Dutch race in New York, or of the Quakers in Pennsylvania. That this must have been a consequence at Athens is clear, from the fact, that one of the first steps taken by Cleisthenes, the real founder of the democracy, was to do away with the confined division of the Ionic tribes, and to form the more extended one mentioned in the text, by which the nature of the senate was completely altered, and it was subjected to popular influences.

five hundred, when the tribes were increased to ten, fifty out of each, and was then called the council of five hundred. They were appointed annually by lot; but certain legal qualifications were required, as well as a blameless life. The members of each tribe, in turn, for thirty-five days, had superior dignity and additional powers, with the title of *prytanes*, from whence the hall was called *Prytaneium*. The prytanes were by turns presidents, had the custody of the seal, and the keys of the treasury and citadel, for one day. The whole assembly formed the council of state of the commonwealth, and had the constant charge of its political affairs; the most important of which was the preparation of business for the assembly of the people, in which nothing was to be proposed which had not first been approved here. This was Solon's law; and, if it had been observed, would have formed a balance of such importance, that the commonwealth would have lasted longer and been more steady. But factious demagogues were often found to remind the people, that all authority was collected into one centre, and that the sovereign assembly was that centre; and a popular assembly being in all ages as much disposed, when unchecked by an absolute negative, to overleap the bounds of law and constitution as the nobles or a king, the laws of Solon were often spurned, and the people demanded and took all power, whenever they thought proper.

Sensible that the business of approving and rejecting magistrates, receiving accusations, catalogues of fines, enacting laws, giving audience to ambassadors, and discussions of religion, would very often be uninteresting to many even of the most judicious and virtuous citizens; that every man's business is no man's; Solon[1] ordained it criminal in any one not to take a side in civil disturbances. Certain times were stated for the meeting of the general assembly; all gates were shut but that which led to it; fines were imposed for non-attendance; and a small pay allowed by the public to those who attended punctually at the hour. Nine *proedri* were appointed from the council; from whom the moderator, *epistates*, was appointed, too, by lot, with whom sat eleven *nomophylaces*, whose duty it was to explain the tendency of any motions contrary to the spirit of the constitu-

[1] Mr. Grote, in his late work on Greece, assigns a different cause for this regulation, — the necessity of bringing such disturbances to an end as soon as possible, by the active interposition of the whole community.

tion. The prytanes, too, had distinct and considerable powers in the assembly. When any change in the law was judged necessary by the people, another court, consisting of a thousand persons, called *nomothetæ*,[1] were directed to consider of the best mode of alteration, and prepare a bill; after all, five syndics were appointed to defend the old law before the new one could be enacted. A law, passed without having been previously published, conceived in ambiguous terms, or contrary to any former law, subjected the proposer to penalties. It was usual to repeal the old law before a new one was proposed, and this delay was an additional security to the constitution.

The regular manner of enacting a law was this: a bill was prepared by the council; any citizen might, by petition or memorial, make a proposition to the *prytanes*, whose duty it was to present it to the council; if approved by them, it became a *proboulema;* and, being written on a tablet, was exposed for several days for public consideration, and at the next assembly read to the people; then proclamation was made by a crier: "Who of those above fifty years of age chooses to speak?" When these had made their orations, any other citizen, not disqualified by law, for having fled from his colors in battle, being deeply indebted to the public, or convicted of any crime, had an opportunity to speak. But the *prytanes* had a general power to enjoin silence on any man, subject, no doubt, to the judgment of the assembly. Without this, debates might be endless. When the debate was finished, the crier, at the command of the *proedri*, proclaimed that the question waited the determination of the people, which was given by holding up the hand. In some uncommon cases, particularly of impeachments, the votes were given privately, by casting pebbles into urns. The *proedri* examined the votes and declared the majority. The *prytanes* dismissed the assembly. Every one of these precautions demonstrated Solon's conviction of the necessity of balances to such an assembly, though they were found by experience to be all ineffectual.

[1] Many writers consider this court as one of the conservative checks upon the popular will devised by Solon. In fact, it became the lever by which to shake the whole system. It is scarcely possibly that a sagacious lawgiver could have made so great a mistake. The probability would seem to favor the idea, founded on the language of Aristotle, that Cleisthenes made some changes in the formation of the court which let in the democratic influence.

From the same solicitude for balances against the turbulence of democracy, he restored the court of Areopagus, improved its constitution, and increased its power. He composed it of those who had held with reputation the office of archon and admitted them into this dignity and authority for life. The experience, the reputation, and permanency of these Areopagites must have been a very powerful check. From the Areopagus alone, no appeal lay to the people; yet if they chose to interfere, no balancing power existed to resist their despotic will. The constitution authorized the Areopagus to stop the judicial decrees of the assembly of the people; annul an acquittal, or grant a pardon; to direct all draughts on the public treasury; to punish impiety, immorality, and disorderly conduct; to superintend the education of youth; punish idleness; to inquire by what means men of no property or employment maintained themselves. The court sat in the night, without light,[1] that the members might be less liable to prejudice. Pleaders were confined to simple narration of facts and application of laws, without ornaments of speech or address to the passions. Its reputation for wisdom and justice was so high, that Cicero said, the commonwealth of Athens could no more be governed without the court of Areopagus, than the world without the providence of God.

The urgent necessity for balances to a sovereign assembly, in which all authority, legislative, executive, and judicial, was collected into one centre, induced Solon, though in so small a state, to make his constitution extremely complicated. No less than ten courts of judicature, four for criminal causes, and six for civil, besides the Areopagus and general assembly, were established at Athens. In conformity to his own saying, celebrated among those of the seven wise men, that "the most perfect government is that where an injury to any one is the concern of all," he directed that, in all the ten courts, causes should be decided by a body of men, like our juries, taken from among the people; the archons only presiding like our judges. As the archons were appointed by lot, they were often but indifferent lawyers, and chose two persons of experience to assist them. These, in time, became regular constitutional officers, by the name of *Paredri*, assessors. The jurors were paid for their ser-

[1] This statement depends upon authority comparatively modern, and somewhat questionable.

vice, and appointed by lot. This is the glory of Solon's laws. It is that department which ought to belong to the people at large; they are most competent for this; and the property, liberty, equality, and security of the citizens, all require that they alone should possess it. Itinerant judges, called *the Forty*, were appointed to go through the counties, to determine assaults, and civil actions under a certain sum.

Every freeman was bound to military service. The multitude of slaves made this necessary, as well as practicable. Rank and property gave no other distinction than that of serving on horseback.

The fundamental principle of Solon's government was the most like M. Turgot's idea of any we have seen. Did this prevent him from establishing different orders and balances? Did it not render necessary a greater variety of orders, and more complicated checks, than any in America? Yet all were insufficient, for want of the three checks, absolute and independent. Unless three powers have an absolute *veto*, or negative, to every law, the constitution can never be long preserved; and this principle we find verified in the subsequent history of Athens, notwithstanding the oath he had the address and influence to persuade all the people to take, that they would change none of his institutions for ten years. Soon after his departure, the three parties of the highlands, lowlands, and coasts began to show themselves afresh. These were, in fact, the party of the rich, who wanted all power in their own hands, and to keep the people in absolute subjection, like the nobles in Poland, Venice, Genoa, Bern, Soleure, &c.; the democratical party, who wanted to abolish the council of five hundred, the Areopagus, the ten courts of judicature, and every other check, and who, with furious zeal for equality, were the readiest instruments of despotism; and the party of judicious and moderate men, who, though weaker than either of the others, were the only balance between them. This last party, at this time, was supported by the powerful family of the Alcmæonides, of whom Megacles, the chief, had greatly increased the wealth and splendor of his house, by marrying the daughter of the tyrant of Sicyon, and had acquired fame by victories in the Olympian, Pythian, and Isthmian games. The head of the oligarchic party was Lycurgus, not the Spartan lawgiver. The democratical party was led by Pisis-

tratus, claiming descent from Codrus and Nestor, with great abilities, courage, address, and reputation for military conduct in several enterprises. Upon Solon's return, after an absence of ten years, he found prejudices deeply rooted; attachment to their three leaders dividing the whole people. He was too old to direct the storm. The factions continued their manœuvres; and at length Pisistratus, by an artifice, became master of the commonwealth. Wounding himself and his horses, he drove his chariot violently into the Agora, where the assembly of the people was held, and, in a pathetic speech, declared "that he had been waylaid as he was going into the country; that it was for being the man of the people that he had thus suffered; that it was no longer safe for any man to be a friend of the poor; it was not safe for him to live in Attica, unless they would take him under their protection." Ariston, one of his partisans, moved for a guard of fifty men, to defend the person of the friend of the people, the martyr for their cause. In spite of the utmost opposition of Solon, though Pisistratus was his friend, this point was carried. Pisistratus, with his guards, seized the citadel; and, his opponents forced into submission or exile, he became the first man, and from this time is called the Tyrant of Athens; a term which meant a citizen of a republic, who by any means obtained a sovereignty over his fellow-citizens. Many of them were men of virtue, and governed by law, after being raised to the dignity by the consent of the people; so that the term tyrant was arbitrarily used by the ancients, sometimes to signify a lawful ruler, and sometimes an usurper.

Pisistratus, of whom Solon said, "Take away his ambition, cure him of his lust of reigning, and there is not a man of more virtue, or a better citizen," changed nothing in the constitution. The laws, assembly, council, courts of justice, and magistrates, all remained; he himself obeyed the summons of the Areopagus, upon the charge of murder. Solon trusted to his old age against the vengeance of the tyrant, and treated him in all companies with very imprudent freedoms of speech. But Pisistratus carried all his points with the people; and had too much sense to regard the venerable legislator, or to alter his system. He returned his reproaches with the highest respect; and gained upon him, according to some authors, to condescend to live with him in great familiarity, and assist him in his administration.

Others say that Solon, after having long braved the tyrant's resentment, and finding the people lost to all sense of their danger, left Athens and never returned.

Solon died at the age of eighty, two years after the usurpation. The usurper soon fell. The depressed rival chiefs, Megacles and Lycurgus, uniting their parties, expelled him; but the confederated rivals could not agree. Megacles proposed a coalition with Pisistratus, and offered him his daughter in marriage. The condition was accepted; but the people in assembly must be gained. To this end they dressed a fine girl with all the ornaments and armor of Minerva, and drove into the city, heralds proclaiming before them, "O Athenians, receive Pisistratus, whom Minerva honoring above all men, herself conducts into your citadel." The people believed the maid to be a goddess, worshipped her, and received Pisistratus again into the tyranny.

Is this government, or the waves of the sea?

But Pisistratus was soon obliged to retire to Eretria, and leave the party of Megacles masters of Athens. He strengthened his connections; and in the eleventh year of this his second banishment, he returned to Attica with an army, and was joined by his friends. The party of Megacles met him with another army, ill disciplined and commanded, from the city, were attacked by surprise and defeated. Pisistratus proclaimed that none need fear who would return peaceably home. The known honor, humanity, and clemency of his character, procured him confidence; his enemies fled, and he entered the city without opposition. He made no fundamental change in the constitution, though, as head of a party, he had the principal influence. He depended upon a large fortune of his own and a good understanding with Thebes and Argos to support him in it. He died in peace, and left his son successor to his influence. Both his sons, Hippias and Hipparchus, were excellent characters; and arts, agriculture, gardening, and literature, as well as wisdom and virtue, were singularly cultivated by the whole race of these tyrants. Harmodius and Aristogiton, however, conspired the death both of Hippias and Hipparchus; the latter was killed, and Hippias was led to severities. Many Athenians were put to death. Hippias, to strengthen his interest with foreign powers, married his only daughter to the son of the Tyrant of Lampsacus. Her epitaph shows that the title of tyrant was not then a term of reproach,—

"This dust covers Archedice, daughter of Hippias, in his time the first of the Greeks. Daughter, sister, wife, and mother of tyrants, her mind was never elated to arrogance."

The opposite party were watchful to recover Athens, and to increase their interest with the other Grecian states for that end. The temple of Delphi was burnt. The Alcmæonides, to ingratiate themselves with the oracle, the Amphictyons, and all Greece, rebuilt it with Parian marble, instead of Porine stone, as they had contracted to do, without asking any additional price. The consequence was, that whenever the Lacedæmonians consulted the oracle, the answer always concluded with an admonition to give liberty to Athens. At length the oracle was obeyed; and, after some variety of fortune, the Alcmæonides, aided by Cleomenes the Spartan, prevailed, and Hippias retired to Sigeium.

It was one maxim of the Spartans, constantly to favor aristocratical power; or rather, wherever they could, to establish an oligarchy. For in every Grecian city there were always an aristocratical, oligarchical, and democratical faction. Whenever the Grecian states had a war with one another, or a sedition within themselves, the Lacedæmonians were ready to interfere as mediators. They conducted the business generally with great caution, moderation, and sagacity; but never lost sight of their view to extend the influence of their state; nor of their favorite measure for that end, the encouragement of aristocratical power, or rather oligarchical; for a few principal families, indebted to Lacedæmon for their preëminence, and unable to retain it without her assistance, were the best instruments for holding the state in alliance. This policy they now proposed to follow at Athens. Cleisthenes, son of Megacles, head of the Alcmæonides, was the first person of the commonwealth. Having no great abilities,[1] a party was formed against him under Isagoras, with whom most of the principal people joined. The party of Cleisthenes was among the lower sort, who being all powerful in the general assembly, he made by their means some alterations in the constitution favoring his own influence. Cleisthenes was now

[1] The tendency among modern scholars who have pursued their investigations into the nature of the institutions of Greece with extraordinary industry, is to consider Cleisthenes as the real author of the democratic system of ancient Athens. He scarcely could have been a man of "no great abilities."

Grote, *Hist. of Greece*, vol. iv. p. 186.

Tyrant of Athens, as much as Pisistratus had been. In the contests of Grecian factions, the alternative was generally victory, exile, or death; the inferior party, therefore, resorted sometimes to harsh expedients. Isagoras and his adherents applied to Lacedæmon. Cleomenes, violent in his temper, entered with zeal into the cause of Isagoras, and sent a herald to Athens, by whom he imperiously denounced banishment against Cleisthenes and his party, on the old pretence of criminality for the execution of the partisans of Cylon. Cleisthenes obeyed. Exalted by this proof of a dread of Spartan power, Cleomenes went to Athens with a small military force, and banished seven hundred families at once.

Such was Athenian liberty.

He was then proceeding to change the constitution to suit the views of Spartan ambition, by dissolving the council of five hundred, and committing the whole power to a new council of three hundred, all partisans of Isagoras. Athens was not so far humbled. The five hundred resisted, and excited the people, who flew to arms, and besieged Cleomenes and Isagoras in the citadel; who the third day surrendered, upon condition that the Lacedæmonians might depart in safety. Isagoras went with them. Many of his party were executed, and Cleisthenes and the exiled families returned; but conscious of their danger from their hostile fellow-citizens in concert with Lacedæmon, they sent to solicit an alliance with Artaphernes, the satrap of Persia. The answer was, If they would give earth and water to Darius they might be received, otherwise they must depart. The ambassadors, considering the imminent danger of their country and party, consented to these humiliating terms. Although Athens was distracted with domestic factions, and pressed with the fear of an attack from Cleomenes, the conduct of her ambassadors, in acknowledging subjection to the Persian king, in hopes of his protection, was highly reprobated upon their return; and it does not appear that Persian assistance was further desired. Yet the danger which hung over Athens was very great. Cleomenes, bent on revenge, formed a confederacy against them, of the Thebans, Corinthians, and Chalcidians. These could not agree, and the Athenians gained some advantages of two of them.

Cleomenes then pretended that Sparta had acted irreligiously in expelling Hippias, who ought to be restored; because, when

he was besieged in the citadel at Athens, he had discovered a collusion between the Delphic priests and the Alcmæonides. Sparta was willing to restore Hippias; but Corinth, their ally, was not. Hippias, despairing of other means, now in his turn applied to Persia, and brought upon his country the Persian war; from which it was delivered by Miltiades, at the battle of Marathon. Miltiades became the envy of the Alcmæonid family. Xanthippus, one of the principal men of Athens, who had married a daughter of Megacles, the great opponent of Pisistratus, conducted a capital accusation against him. He was condemned in a fine of fifty talents, more than he was worth. His wound, which prevented him from attending the trial, mortified, and he died in prison. In order to brand the family of Pisistratus, the fame of Harmodius and Aristogiton was now cried up. They had assassinated Hipparchus from mere private revenge; but they were now called asserters of public liberty. The tyrannicide, as it was called, was celebrated by songs, statues, ceremonies, and religious festivals.

It must be acknowledged that every example of a government, which has a large mixture of democratical power, exhibits something to our view which is amiable, noble, and I had almost said, divine. In every state hitherto mentioned, this observation is verified. What is contended for, is, that the people in a body cannot manage the executive power, and, therefore, that a simple democracy is impracticable; and that their share of the legislative power must be always tempered with two others, in order to enable them to preserve it, as well as to correct its rapid tendency to abuse. Without this, they are but a transient glare of glory, which passes away like a flash of lightning, or like a momentary appearance of a goddess to an ancient hero, which, by revealing but a glimpse of celestial beauties, only excited regret that he had ever seen them.

The republic of Athens, the schoolmistress of the whole civilized world for more than three thousand years, in arts, eloquence, and philosophy, as well as in politeness and wit, was, for a short period of her duration, the most democratical commonwealth of Greece. Unfortunately her history, between the abolition of her kings and the time of Solon, has not been circumstantially preserved. During this period, the people seem to have endeavored to collect all authority into one centre, and to have avoided

a composition of orders and balances as carefully as M. Turgot. But that centre was a group of nobles, not the nation. Their government consisted in a single assembly of nine archons chosen annually by the people. But even here was a check; for by law the archons must all be chosen out of the nobility. But this form of government had its usual effects, in introducing anarchy, and such a general profligacy of manners, that the people could at length be restrained from even the most ordinary crimes by nothing short of the last punishment. Draco accordingly proposed a law, by which death should be inflicted on every violation of the law. Humanity shuddered at so shocking a severity! and the people chose rather that all offences should go unpunished, than that a law thus written in blood, as they termed it both in horror and contempt, should be executed.

Confusions increased, and divided the nation into three factions; and their miseries became so extreme, that they offered Solon an absolute monarchy. He had too much sense, as well as virtue, to accept it; but employed his talents in new-modelling the government. Sensible, from experience, of the fatal effects of a government too popular, he wished to introduce an aristocracy, moderated like that of Sparta; but thought the habits and prejudices of the people too strong to bear it. The archons he continued; but, to balance their authority, he erected a senate of four hundred, to be chosen by ballot of the people.[1] He also revived the court of Areopagus, which had jurisdiction in criminal cases, and the care of religion. He excluded from the executive or the magistracy all the citizens who were not possessed of a certain fortune; but vested the sovereignty in a legislative assembly of the people, in which all had a right to vote. In this manner Solon attempted a double balance. The Areopagus was to check the executive in the hands of the archons; and the senate of four hundred, the fickleness and fire of the people. Every one must see that these devices would have been no effectual control in either case; yet they were better than none. It was very right that the people should have all

[1] This is declared by Wachsmuth not to be sustained by any authority, as it certainly conflicts with the statement made a few pages back, (p. 480,) that they were chosen by lot. Dr. Thirlwall, on the other hand, maintains that they were elected. The truth is, that very little is known of the constitution of Solon's senate. Wachsmuth, *Historical Antiquities of the Greeks*, translated by E. Woolrych, vol. i. p. 378; Thirlwall, *History of Greece*, vol. ii. p. 42.

elections; but democratical prejudices were so inveterate, that he was obliged not only to make them, assembled in a body, an essential branch of the legislature, but to give them cognizance of appeals from all the superior courts. Solon himself, in his heart, must have agreed with Anacharsis, that this constitution was but a cobweb to bind the poor, while the rich would easily break through it. Pisistratus soon proved it, by bribing a party, procuring himself a guard, demolishing Solon's whole system before his eyes, and establishing a single tyranny. The tyrant was expelled several times by the opposition, but as often brought back, and he finally transmitted his monarchy to his sons. One of these was assassinated by Harmodius and Aristogiton; and the other was driven into banishment by the opposition, aided by the neighboring state, Sparta. He fled to the Persians, excited Darius against his country, and was killed at Marathon.

These calamities inspired the people with such terrors of a single tyrant, that, instead of thinking to balance effectually their "orders," they established the ostracism, to prevent any man from becoming too popular. A check indeed, but a very injudicious one; for it only banished their best men. History nowhere furnishes so frank a confession of the people themselves, of their own infirmities and unfitness for managing the executive branch of government, or an unbalanced share of the legislature, as this institution. The language of it is, "We know ourselves so well, that we dare not trust our own confidence and affections, our own admiration and gratitude for the greatest talents and sublimest virtues. We know our heads will be turned, if we suffer such characters to live among us, and we shall always make them kings." What more melancholy spectacle can be conceived even in imagination, than that inconstancy which erects statues to a patriot or a hero one year, banishes him the next, and the third erects fresh statues to his memory?[1]

Such a constitution of government, and the education of youth which follows necessarily from it, always produce such characters as Cleon and Alcibiades; mixtures of good qualities enough to acquire the confidence of a party, and bad ones enough

[1] Mr. Grote's defence of the ostracism as a conservative feature of the government, on the grounds recited in the text, is deserving of consideration on account of its ingenuity, even if it do not create entire conviction of its soundness.
History of Greece, vol. iii. pp. 200 – 215.

to lead them to destruction; whose lives show the miseries and final catastrophe of such imperfect polity.

From the example of Athens, it is clear that the government of a single assembly of archons, chosen by the people, was found intolerable; that, to remedy the evils of it, Solon established four several orders, — an assembly of the people, an assembly of four hundred, an assembly of archons, and the Areopagus; that he endeavored to balance one singly by another, instead of forming his balance out of three branches. Thus, these attempts at an equilibrium were ineffectual; produced a never-ending fluctuation in the national councils; continual factions, massacres, proscriptions, banishment, and death of the best citizens. And the history of the Peloponnesian war, by Thucydides, informs us how the raging flames at last burnt out.

The people in each of the United States, have, after all, more real authority than they had in Athens.[1] Planted, as they are, over large dominions, they cannot meet in one assembly, and, therefore, are not exposed to those tumultuous commotions, like the raging waves of the sea, which always agitated the ecclesia at Athens. They have all elections of governor and senators, as well as representatives, so prudently guarded, that there is scarce a possibility of intrigue. The property required in a representative, senator, or even a governor, is so small, that multitudes have equal pretensions to be chosen. No election is confined to any order of nobility, or to any great wealth; yet the legislature is so divided into three branches, that no law can be passed in a passion, nor any inconsistent with the constitution.

[1] "There was no want, at Athens, of well-conceived and strict regulations; but what is the use of provident measures, where the spirit of the administration is bad? Men have at all times been unjust, and covetous, and unprincipled, and above all, the Greeks distinguished themselves for the uncontrolled gratification of their own desires, and their contempt for the happiness of others. If any competent judge of moral actions will contemplate their character without prejudice, and unbiased by their high intellectual endowments, he will find that their private life was unstable, and devoid of virtue; that their public life was a tissue of restless intrigues and passions; and, what was the worst of all, that there existed, to a far greater degree than in the Christian world, a want of moral principle, and a harshness and cruelty in the popular mind. The display of noble actions, it is true, has ceased, and will never re-appear with the same brilliancy; but the principles of the majority of mankind have been elevated, even if we allow that some distinguished individuals in ancient times were as pure as the most exalted characters in modern days; and in this general elevation consists the progress of mankind." Boeckh's *Public Economy of Athens*, translated by Lewis, p. 194.

The executive is excluded from the two legislative assemblies; and the judiciary power is independent, as well as separate from all. This will be a fair trial, whether a government so popular can preserve itself. If it can, there is reason to hope for all the equality, all the liberty, and every other good fruit of an Athenian democracy, without any of its ingratitude, levity, convulsions, or factions.

THE POLICY OF ANTALCIDAS.

In the year 1774, a certain British officer, then at Boston, was often heard to say: "I wish I were parliament; I would not send a ship or troop to this country; but would forthwith pass a statute, declaring every town in North America a free, sovereign, and independent commonwealth. This is what they all desire, and I would indulge them. I should soon have the pleasure to see them all at war with one another, from one end of the continent to the other." This was a gentleman of letters, and perhaps had learned his politics from Antalcidas, whose opinion concerning the government of a single assembly is very remarkable. But the Greek and the Briton would both have found their artifices in America ineffectual. The Americans are very far from being desirous of such multiplications and divisions of states, and know too well the mischiefs that would follow from them. Yet such a spirit among the people would, in a course of time, be the natural and inevitable effect of M. Turgot's system of government.

It is not very certain whether Antalcidas was a Spartan or not. If he was, he had violated the law of Lycurgus by travel, had resided long in Persia, and maintained an intercourse and correspondence with several noble families. He was bold, subtle, insinuating, eloquent; but his vices and corruption were equal to his address. The stern Spartan senate thought him a proper instrument to execute an insidious commission at a profligate court. The institutions of his own country, Sparta, were the objects of his ridicule; but those of the democratical states of Greece, of his sovereign contempt. The ancient maxim of some of the Greeks, "*That every thing is lawful to a man in the service of his country*," was now obsolete, and had given way to a purer morality; but Antalcidas was probably one of those philosophers

who thought every thing lawful to a man which could serve his private interest. The Spartan senate never acted upon a principle much better; and therefore might, upon this occasion, have given their ambassador the instruction which he pretended, namely, — to offer "to resign all pretensions to the Greek cities in Asia, which they would acknowledge to be dependencies of the Persian empire; and to declare all the cities and islands, small and great, totally independent of each other." These articles, in consequence of which there would not be any republic powerful enough to disturb the tranquillity of Persia, were more advantageous to them than the most insolent courtier would have ventured to propose. The ambassador was rewarded by a magnificent present; and the terms of peace transmitted to court, to be ratified by Artaxerxes. The negotiation, however, languished, and the war was carried on with violence for several years; and all the art, activity, and address of Antalcidas were put to the trial before he obtained the ratification. The treaty was at last completed: "That all the republics, small and great, should enjoy the independent government of their own hereditary laws; and whatever people rejected these conditions, so evidently calculated for preserving the public tranquillity, must expect the utmost indignation of the Great King, who, in conjunction with the republic of Sparta, would make war on their perverse and dangerous obstinacy, by sea and land, with ships and money."

Antalcidas, and Tiribazus, the Persian satrap, with whom he had concerted the treaty, had foreseen that, as Thebes must resign her authority over the inferior cities of Bœotia; as Argos must withdraw her garrison from Corinth, and leave that capital in the power of the aristocratic or Lacedæmonian faction; and as Athens must abandon the fruits of her recent victories, there might be an opposition made to the treaty by these three states. To guard against which, they had provided powerful armaments by sea and land, which, with Spartan and Persian threats, so intimidated all, that all at last submitted.

This peace of Antalcidas forms a disgraceful era in the history of Greece. Their ancient confederacies were dissolved; the smaller towns were loosened from all connection with the large cities; all were weakened by being disunited. What infamy to the magistrates of Sparta, and their intriguing, unprincipled ambassador! But Athens, Thebes, and Argos, by the friendship of

the democratical cities and confederacies, had become powerful, and excited their haughty jealousy. The article which declared the smaller cities independent was peculiarly useful to the views of Sparta; it represented them as the patrons of liberty among the free. The stern policy of Sparta had crushed in all her secondary towns the hope of independence. The authority of Athens, Thebes, Argos, and all the democratical confederacies, was less imperious; the sovereign and subject were more nearly on a footing of equality; and the Spartans knew, that "men are disposed to reject the just rights of their equals, rather than revolt against the tyranny of their masters;" their own slaves and citizens had furnished them with constant proof of this.

But Sparta, by this masterpiece of roguery, meant, not only still to hold all her own subordinate cities in subjection, not merely to detach the inferior communities from her rivals, but to add them to her own confederacy. To this end, by her emissaries, she intrigued in all the subordinate cities. How? by promoting liberty, popular government, or proper mixtures of a well-ordered commonwealth? By no means; but by supporting the aristocratical factions in all of them; fomenting animosities among the people against each other, and especially against their capitals. Complaints occasioned by these cabals, were referred to the Spartan senate, which had acquired the reputation of the patron of the free, the weak, and the injured, and which always decided in its own favor. But the ambition of Spartans, cool and cunning as it was, had not patience to remain long satisfied with such legal usurpations; they determined to mix the terror of their arms with the seduction of policy.

Before we proceed to an account of their operations, we must develop a little more fully the policy of Antalcidas. Besides the free republics of Attica, Thebes, and Argos, which consisted of several cities, governed by their first magistrate, senate, and people, in which the subordinate cities always complained of the inordinate influence of the capital, there were several republics reputed still more popular, because they were governed by single assemblies, like Biscay, the Grisons, Appenzel, Underwald, Glarus, &c. These republics consisted of several towns, each governed by its own first magistrate, council, and people; but confederated together, under the superintendence of a single diplomatical assembly, in which certain common laws were agreed on, and cer-

tain common magistrates appointed, by deputies from each town. These confederacies are the only examples of governments by a single assembly which were known in Greece. Antalcidas knew that each of these towns was discontented with the administration of the common assembly, and that all, in their hearts, wished for independence. It was to this foible of the people that he addressed that policy, in his Persian treaty, by which he reduced to atoms, as if it had been a rope of sand, every democratical city and confederacy, and every one in which democracy and aristocracy were mixed, throughout all Greece.

The first victim of this ambitious policy was Arcadia, in the centre of Peloponnesus, whose principal town was Mantinea. Arcadia was a fertile and beautiful valley, surrounded by lofty mountains. The scattered villages of shepherds, inhabiting these hills and vales, had grown into cities, by the names of Tegea, Stymphalis, Heræa, Orchomenus, and Mantinea. The inhabitants were distinguished by their innocence, and the simplicity of their manners; but, whenever they had been obliged from necessity, to engage in war, they had displayed such vigor, energy, and intrepidity, as made their alliance very desirable. The dangerous neighborhood of Sparta had obliged them to fortify their towns and maintain garrisons; but jealousies arose between Tegea and Mantinea, and emulations to be the capital. The year after the treaty of Antalcidas, ambassadors were sent by the Spartan senate to the assembly at Mantinea, to command them to demolish the walls of their proud city, and return to their peaceful villages. The reasons assigned were, that the Mantineans had discovered their hatred to Sparta, envied her prosperity, rejoiced in her misfortunes, and, in the late war had furnished some corn to the Argives. The Mantineans received the proposal with indignation; the ambassadors retired in disgust. The Spartans proclaimed war, demanded the aid of their allies, and marched a powerful army under their king, Agesipolis, and invaded the territory. After the most destructive ravages of the country, and a long siege of Mantinea, they were not able to subdue the spirit of this people, until they turned the course of the river Ophis, and laid the walls of the city under water; these, being of raw bricks, dissolved and fell. The inhabitants, intimidated, offered to demolish the walls, and follow Sparta in peace and war, upon condition they might be allowed to continue and

live in the city. Agesipolis replied, that, while they lived together in one city, their numbers exposed them to the delusions of seditious demagogues, whose address and eloquence seduced the multitude from their true interest, and destroyed the influence of their superiors in rank, wealth, and wisdom, on whose attachment alone the Lacedæmonians could depend; and, therefore, that they must destroy their houses in the city, separate into four communities, and return to those villages which their ancestors had inhabited. The terror of an immediate assault made it necessary to comply; and the Spartans made a mighty merit of suffering sixty of the most zealous partisans of democracy to fly, unmurdered, from their country.

The little republic of Phlius, too, like every other where a balance is not known and preserved, was distracted by parties. The popular party prevailed, and banished their opponents, the friends of aristocracy. The Spartans threatened, and the ruling party permitted the exiles to return; but not meeting with respectful treatment enough, they complained; and the Spartans, under Agesilaus, appointed commissioners to try and condemn to death the obnoxious leaders of the people in Phlius. This odious office was executed with such unexampled severity, as terrified those who survived into an invariable attachment to Sparta.

The confederacy of Olynthus was next attempted. A number of towns, of which Olynthus was the principal, between two rivers, had been incorporated or associated together, and had grown into some power and greater hopes. This was enough to arouse the jealousy of Sparta. They sent four or five successive armies, under their ablest kings, to take the part of the aristocratical faction, and conquer this league. Such was the spirit and resources of this little spot, that they defended themselves for four or five campaigns, and then were forced to submit.

In consequence of the peace of Antalcidas, Thebes had been torn with aristocratic and democratic factions, and Sparta joined the latter, which ultimately produced long and obstinate wars, and the exalted characters of Pelopidas and Epaminondas, who, with all their virtues, were not able finally to establish the independency of their country, though both perished in the attempt; Epaminondas, to the last, refusing to the several communities of Bœotia their hereditary laws and government, although he was one of the democratical party.

Sparta, in the next place, sent a detachment to support the partisans of aristocracy in Argolis, Achaia, and Arcadia, but was compelled by Pelopidas and Epaminondas to evacuate those countries; but Epaminondas supported aristocratic government. As soon as he retired, the Arcadians complained against him, that a people, who knew by their own experience the nature of aristocracy, should have confirmed that severe form of government in an allied or dependent province. The multitude in Thebes condemned the proceedings of Epaminondas, and sent commissioners and a body of mercenaries into Achaia, who assisted the populace to dissolve the aristocracy, to banish or put to death the nobles, and institute a democracy. The foreign troops were scarcely departed, when the exiles, who were very numerous and powerful, returned, and, after a desperate and bloody struggle, recovered their ancient influence. The leaders of the populace were now, in their turn, put to death or expelled; the aristocracy reëstablished; and the magistrates craved the protection of Sparta, which was readily granted.

It would be endless to pursue the consequences of the peace of Antalcidas. Uninterrupted contests and wars in every democratical state in Greece; aristocratical and democratical factions eternally disputing for superiority, mutually banishing and butchering each other; proscriptions, assassinations (of which even Pelopidas was not innocent), treacheries, cruelties without number and without end. But no man, no party, ever thought of introducing an effectual balance, by creating a king with an equal power, to balance the other two. The Romans began to think of this expedient, but it was reserved for England to be the first to reduce it to practice.

Would M. Turgot have said, that if Thebes, Athens, Argos, and the Achæan, Arcadian, and Olynthian leagues, had been each of them governed by a legislature composed of a king, senate, and assembly, with equal authority, and each a decisive negative, that the cause of liberty, in all Greece, would have been thus crumbled to dust by such a paltry trick of Antalcidas? Would the childish humor of separating into as many states as towns have ever been indulged or permitted? Most certainly not. And if the power of negotiation and treaties and the whole executive had been in one man, could the perfidious ambassadors of Sparta and the other states have intrigued and embroiled every thing as they did?

ACHAIA.

The Achæans, whose republic became so famous in later times, inhabited a long but narrow strip of land upon the Corinthian Gulf, which was destitute of harbors, and, as its shores were rocky, of navigation and commerce; but the impartial and generous spirit of their laws, if we are to credit Polybius and their other panegyrists, was some compensation for the natural disadvantages of their situation and territory. They admitted strangers into their community on equal terms with the ancient citizens; and, as they were the first, and, for a long time, the only republic of Greece which had such liberality, it is not strange that they should have enjoyed the praises of all foreigners. In all other states of Greece, in which the people had any share in government, there were constant complaints that one powerful capital domineered over the inferior towns and villages, like Thebes in Bœotia, Athens in Attica. In Laconia, Lycurgus avoided this inconvenience by two popular assemblies, one for Sparta, and one for the country; but in Achaia there was no commercial town, and all were nearly equal, having common laws and institutions, and common weights and measures. Helice, which is distinguished by Homer as the most considerable town of Achaia, was the place of assembly of the congress, until it was swallowed up in an earthquake; then Ægæ became the seat of congress, which annually appointed presidents in rotation, and generals, who were responsible to the congress, as the members of congress were to the cities they represented. This is said to have been an excellent system of government, because it checked the ambition of Achaia, while it maintained its independence. And Polybius is full of the praises of this people for their "virtue and probity in all their negotiations, which had acquired them the good opinion of the whole world, and procured them to be chosen arbitrators between the Lacedæmonians and Thebans; for their wise councils and good dispositions; for their equality and liberty, which is in the utmost perfection among them; for their laws and institutions; for their moderation and freedom from ambition," &c. Yet whoever reads his own history, will see evident proofs, that much of this is the fond partiality of a patriot for his country; and that they

had neither the moderation he ascribes to them, nor the excellent government. Better indeed than the other republics of Greece it might be; and its congress, as a diplomatic assembly, might have governed its foreign affairs very well, if the cities represented in it had been well constituted of a mixture of three independent powers; but it is plain they were not; and were in a continual struggle between their first magistrates, nobles, and people, for superiority, which occasioned their short duration and final ruin.

As this example deserves to be fully examined by every American, let us explain it a little more particularly.

Atreus, King of Argos and Mycenæ, was the son of Pelops, and father of Agamemnon, who was the father of Orestes, who was the father of Tisamenus. Pelops, after whom Peloponnesus was named, was the son of Tantalus, a king of Phrygia; and Tantalus was the son of Jupiter by the nymph Plota.

Tisamenus, flying from Sparta, upon the return of the Heraclidæ, governed in Achaia, and was the first king of that people. The dominion by him there founded was continued, in a rightful succession, down to Gyges. Notwithstanding his descent from Jupiter, his government was probably like that of Alcinous in Phæacia, — twelve archons presided over the twelve cities, who, each in his district, was the first magistrate; and all able to make out, some way or other, their connection with some of the ancient families, who were all alike honorably descended, at least, from an inferior god or goddess. Tisamenus made the thirteenth, and was first among equals at least. The sons of Gyges not governing by law, but despotically, the monarchy was abolished and reduced to a popular state; probably it was only an aristocracy of the twelve archons. These hints at the genealogy of these kings are to show how intimately theology was intermixed with politics in every Grecian state and city; and, at the same time, to show that the whole force of superstition, although powerful enough to procure crowns to these persons, yet, for want of the balance we contend for, was not sufficient to restrain the passions of the nobles, and prevent revolutions almost as rapid as the motion of a wheel. Nothing has ever been found to supply the place of the balance of three powers. The abolition of this limited monarchy was not effected by the people for the purpose of introducing democracy or a mixed government; but by the nobles, for the sake of establishing an

aristocracy. The new government, consequently, was a confederation of twelve archons, each ruling as first magistrate in a separate city, with his council and people, as an independent state. The twelve archons met in a general assembly, sometimes in person, and sometimes by proxy, to consult of general affairs and guard against general dangers. This whole state could not be larger than another Biscay, and each city must have been less than a merindade, and its general assembly like the junta-general. Yet such is the passion for independence, that this little commonwealth or confederacy of commonwealths could not hold together. The general assembly was neglected; the cities became independent. Some were conquered by foreigners, and some lost their liberties by domestic tyrants; that is, by their first magistrates assuming arbitrary power. Polybius discovers as much affection for this little republic as Rousseau did for Geneva, and is very loth to confess its faults. He colors over the revolutions they underwent for a course of ages, by saying, that "though their affairs were governed according to the diversity of times and occurrences, all possible endeavors were used to preserve the form of a popular state. The commonwealth was composed of twelve cities, which are in being at this day, Olenus and Helice only excepted, which were swallowed up by the sea in an earthquake that happened not long before the battle of Leuctra; which cities are Patra, Dyma, Phara, Trytæa, Leontium, Ægira, Pellene, Ægium, Bura, Ceraunia, Olenus, and Helice. After the death of Alexander, and since the Olympiad we have mentioned, these cities fell into dangerous dissensions, chiefly by the artifices of the Macedonian princes, when every city apart meditated on nothing but its own private profit and ends, to the prejudice and destruction of its neighbors; and this gave occasion to Demetrius and Cassander, and afterwards to Antigonus Gonatus, to put garrisons in some of their cities; and others were invaded and governed by tyrants, who, in those days, were very numerous in Greece. But about the one hundred and twenty-fourth Olympiad, when Pyrrhus invaded Italy, these people began to see the error of their dissensions, and labored to return to their former union. Those who gave the first example were Dyma, Patra, and Phara. Five years afterwards, Ægium, having cast out the garrison that was placed over it, was received into the confederacy. Bura followed

the example, having first killed the tyrant; and soon after Ceraunia did the like; for Iseas, their tyrant, considering how that those of Ægium had expelled their garrison, and that he who governed in Bura was already slain by the practices of Marcus and the Achaians, and that it would be his lot to have them all quickly for enemies, resigned the dominion, after having first stipulated with the Achaians for indemnity for what was passed, and so the city was incorporated into the union of the Achaians. . . . .

"The cities, then, we have mentioned continued for the space of five-and-twenty years to preserve their form of government unchanged, choosing in their general assembly two prætors (or presidents) and a secretary. Afterwards, they concluded to have but one prætor only, who should be charged with the management of their affairs; and the first who enjoyed that dignity was Marcus the Carian, who, after four years of his administration, gave place to Aratus the Sicyonian, who, at the age of twenty years, after he had by his virtue and resolution rescued his country from tyranny, joined it to the commonwealth of the Achaians; so great a veneration had he from his youth for the manners and institutions of that people. Eight years after, he was a second time chosen prætor, and won Acro-Corinth, which Antigonus had fortified with a garrison, whereby Aratus freed all Greece from no small apprehension. When he had restored liberty to Corinth, he united it to the Achaians, together with the city of Megara, which he got by intelligence during his prætorship. . . . In a word, Aratus, who, in a short space, brought many and great things to pass, made it manifest, by his councils and actions, that his greatest aim was the expulsion of the Macedonians out of Peloponnesus, to suppress tyranny, and assert the liberty of his country. So that, during the whole reign of Antigonus Gonatus, Aratus constantly opposed all his designs and enterprises, as he did the ambition of the Ætolians, to raise themselves on the ruins of their neighbor states. And, as in all the transactions of his administration he gave singular evidence of a steady mind and firm resolution, all his attempts succeeded accordingly, notwithstanding many states confederated to hinder the union, and to destroy the commonwealth of the Achaians.

"After the death of Antigonus, the Achaians entered into a

league with the Ætolians, and generously assisted them in their war against Demetrius; so that the ancient hatred between these two people seemed for the present extinguished, and the desire of concord began by degrees to grow in the minds of the Ætolians. Demetrius died, when many great and noble occasions were given to the Achaians, of finishing the project they had conceived; for the tyrants who reigned in Peloponnesus, having lost the support of Demetrius, who greatly favored them, began now to despair; and, on the other hand, being awed by Aratus, who admonished them to quit their governments, on promise of great honors and rewards to such as voluntarily resigned, and threatening others with hostility who refused; whereupon, they resolved to despoil themselves of their dignities, restore their people to liberty, and incorporate them with the Achaians. As to Lysidas, the Megalopolitan, he, wisely foreseeing what was likely to come to pass, frankly renounced his dominion during the life of Demetrius, and was received into the general confederacy of rights and privileges with the whole nation. Aristomachus, tyrant of the Argives, Xeno, of the Hermionians, and Cleonymus, of the Phliasians, resigning their authority at the time we mentioned, were likewise received into the alliance of the Achaians.

"In the mean time, the Ætolians began to conceive jealousies at the growing greatness and extraordinary success of the Achaians, and basely entered into a league with Antigonus, who at that time governed Macedon, and with Cleomenes, King of the Lacedæmonians."

These three powers, Macedonia, Lacedæmon, and Ætolia, were to invade Achaia on all sides; but the great political abilities of Aratus defeated the enterprise. "He considered that Antigonus was a man of experience, and willing enough to make alliances; and that princes have naturally neither friends nor enemies, but measure amities and enmities by the rules of interest. He therefore endeavored after a good understanding with that prince, and determined to propose the joining the forces of the Achaians to his." He proposed to cede him some towns; and the alliance was formed, and the Cleomenic war commenced. In the prosecution of it, Cleomenes and his Spartans displayed the utmost ferocity and cruelty, particularly at Ægium, where "he put in practice so many outrages and cruelties

of war, that he left not so much as any appearance that it had been ever a peopled place."[1] There is great reason to suspect that the Achaians were not less guilty of cruelty; for Polybius professes to follow the account given by Aratus himself, in a history which that prætor wrote of Achaia, who may be well suspected of partiality; and Polybius himself was the son of Lycortas of Megalopolis, who perfected and confirmed the confederacy of the Achaians, and he discovers throughout his history a strong attachment to this people. If the history of Clearchus was extant, we might possibly see that the Achaians, the Spartans, and Macedonians were equally liable to the accusation of inhumanity. Mantinea was subjected to unspeakable calamities as well as Ægium; but Polybius endeavors to cover this over with a veil by abusing Clearchus, accusing him of departing from the dignity of history, and writing tragedies, by representing women with dishevelled hair and naked breasts, embracing each other with melting lamentations and tears, and complaints of men, women, and children, dragged away promiscuously. He attempts to justify the punishment of this city, by charging it with treacherously betraying itself into the hands of the Spartans, and massacring the Achaian garrison. But this was no more than the usual effect of the continual revolutions in the Greek cities, from democracy to aristocracy, from that to monarchy, and back again through the whole circle.

In every one of these cities there were three parties, — a monarchical party, who desired to be governed by a king, or tyrant, as he was then called; an aristocratical party, who wished to elect an oligarchy; and a democratical party, who were zealous for bringing all to a level. Each faction was for collecting all authority into one centre in its own way; but, unfortunately, there was no party who thought of a mixture of all these three orders, and giving each a negative by which it might balance the other two. Accordingly, the regal party applied to Macedonian kings for aids and garrisons; the aristocratical citizens applied to Sparta for the like assistance; and the democratical factions applied to Aratus and the Achaian league. The consequence was, as each party prevailed, it brought in a new garrison, and massacred the old one, together with the leaders of the faction

[1] Polybius, vol. i. b. 2, translated by Sir H. S.

subdued. But is such a system to be recommended to the United States of America? If the Americans had no more discretion than the Greeks, no more humanity, no more consideration for the benign and peaceful religion they profess, they would still have to consider, that the Greeks had in many places forty, and in all ten, slaves, to one free citizen; that the slaves did all the labor, and the free citizens had nothing to do but cut one another's throats. Wars did not cost money in Greece; happily for the world, at present they are very expensive. An American soldier will not serve one year, without more money for pay than many of these Greek cities had for their whole circulating medium.

There is but one possible means of realizing M. Turgot's idea. Let us examine it well before we adopt it. Let every town in the Thirteen States be a free, sovereign, and independent democracy; here you may nearly collect all authority into one centre, and that centre the nation. These towns will immediately go to war with each other, and form combinations, alliances, and political intrigues, as ably as the Grecian villages did. But these wars and negotiations cannot be carried on but by men at leisure. The first step to be taken, then, is to determine who shall be freemen, and who slaves. Let this be determined by lot. In every fifty men, forty are to be slaves, and stay at home unarmed, to labor in agriculture and mechanic arts, under certain overseers provided with good whips and scourges. All commerce and navigation, fisheries, &c. are to cease, of course. The other ten are to be free citizens, live like gentlemen, eat black broth, and go out to war; some in favor of tyrants, some for the well-born, and some for the multitude. For, even in the supposition here made, every town will have three parties in it; some will be for making the moderator a king, others for giving the whole government to the selectmen, and a third sort for making and executing all laws, and judging all causes, criminal and civil, in town meeting. Americans will well consider the consequences of such systems of policy, and such multiplications and divisions of states, and will universally see and feel the necessity of adopting the sentiments of Aratus, as reported by Plutarch: "That small cities could be preserved by nothing else but a continual and combined force, united by the bond of common interest; and as the members of the body live and breathe by their mutual

communication and connection, and when once separated pine away and putrefy, in the same manner are cities ruined by being dismembered from one another, as well as preserved when, linked together in one great body, they enjoy the benefit of that providence and council that governs the whole."[1] These were the sentiments which, according to the same Plutarch, acquired him so much of the confidence of the Achaians, "that, since he could not by law be chosen their general every year, yet every other year he was, and by his councils and actions was in effect always so; for they perceived that neither riches nor repute, nor the friendship of kings, nor the private interest of his own country, nor any other thing else was so dear to him as the increase of the Achaian power and greatness."[2]

CRETE.

This celebrated island, with the fantastical honor of giving birth to some of the gods of Greece, had the real merit and glory of communicating to that country many useful improvements. Their insular situation defended the people from invasions by land, and their proximity to Egypt afforded them an easy intercourse of commerce by sea with the capital of that kingdom. Here Rhadamanthus, in his travels, had collected those inventions and institutions of a civilized people, which he had the address to apply to the confirmation of his own authority. Minos is still more distinguished. In his travels in the East, he saw certain families possessed of unrivalled honors and unlimited authority, as vicegerents of the Deity. Although the Greeks would never admit, in the fullest latitude of oriental superstition and despotism, this odious profanation, yet Minos, taking advantage of his own unbounded reputation, and that enthusiasm for his person which his skill and fortune in war, his genius for science, and talents for government, had excited among wandering credulous savages, spread a report that he was admitted to familiar conversations with Jupiter, and received from that deity his system of laws, with orders to engrave it on tables

[1] "In the same manner, numerical divisions of the people connect and unite the whole, each smaller part being restrained and awed by a larger, and the whole by the resolution of the general assembly." S.

[2] "A noble character of the patriot Aratus." S.

of brass. The great principle of it was, that all freemen should be equal, and, therefore, that none should have any property in lands or goods; but that citizens should be served by slaves, who should cultivate the lands upon public account. The citizens should dine at public tables, and their families subsist on the public stock. The monarch's authority was extremely limited, except in war. The magistracies were the recompense of merit and age; and superiority was allowed to nothing else. The youth were restrained to a rigid temperance, modesty, and morality, enforced by law. Their education, which was public, was directed to make them soldiers. Such regulations could not fail to secure order, and what they called freedom, to the citizens; but nine tenths of mankind were doomed to slavery to support them in total idleness, excepting those exercises proper for warriors, become more necessary to keep the slaves in subjection, than to defend the state against the pirates and robbers with whom the age abounded. Idomeneus, grandson of Minos, and commander of the Cretan forces in the Trojan war, was among the most powerful of the Grecian chiefs, and one of the few who returned in safety from that expedition. Here was a government of all authority in one centre, and that centre the most aged and meritorious persons of the nation, with little authority in the king, and none in the rest of the people; yet it was not of sufficient strength to hold together. The venerable old men could not endure the authority, or rather the preëminence of the king. Monarchy must be abolished; and every principal city became early a separate, independent commonwealth; each, no doubt, under its patriarch, baron, noble, or archon, for they all signify the same thing; and continual wars ensued between the several republics within the island; and Cretan valor and martial skill were employed and exhausted in butchering one another, until they turned all the virtues they had left against mankind in general, and exerted them in piracies and robberies, to their universal infamy throughout all Greece. Nor was Crete ever of any weight in Grecian politics after the Trojan war.

CORINTH.

Monarchy remained in this emporium of Greece longer than in any other of the principal cities; but the noble families here

could no better endure the superiority of a monarch, than others in all countries; and with numerous branches of the royal family, (named Bacchidæ, from Bacchis, fifth monarch in succession from Aletes,) at their head, they accordingly put to death Telestes, the reigning monarch; and, usurping the government, under an association among themselves, they instituted an oligarchy. An annual first magistrate, with the title of Prytanis, but with very limited prerogatives, like a doge of Venice, was chosen from among themselves. Several generations passed away under the administration of this odious oligarchy; but the people at length finding it intolerably oppressive, expelled the whole junto, and set up Cypselus as a monarch or tyrant. He had long been the head of the popular party, and was deservedly a popular character, possessed of the confidence and affection of his fellow citizens to a great degree, or he never could have refused the guard which was offered him for the protection of his person against the attempts of the defeated oligarchy. His moderation and clemency are allowed by all; yet he is universally called by the Grecian writers Tyrant of Corinth, and his government a *Tyranny*.* Aristotle † informs us that his tyranny continued thirty years, because he was a popular man and governed without guards. Periander, one of the seven wise men, his son and successor, reigned forty-four years, because he was an able general. Psammetichus, the son of Gordius, succeeded, but his reign was short; yet this space of seventy-seven years is thought by Aristotle one of the longest examples of a tyranny or an oligarchy. At the end of this period the nobles again prevailed; but not without courting the people. The tyranny was demolished, and a new commonwealth established, in which there was a mixture of oligarchy and democracy, to prevent the first from running into excess of oppression, and the other into turbulence and license.

Here we find the usual circle. Monarchy first limited by nobles only; then the nobles, becoming envious and impatient of the monarch's preëminence, demolish him, and set up oligarchy. This grows insolent and oppressive to the people, who set up a favorite to pull it down. The new idol's posterity grow insolent; and the people finally think of introducing a mixture

* "But this had not then an odious meaning." S.
† *On Government*, l. 5, c. 12.

of three regular branches of power, in the one, the few, and the many, to control one another, to be guardians in turn to the laws, and secure equal liberty to all.

Aristotle, in this chapter, censures some parts of the eighth book of Plato, and says, "That in general, when governments alter, they alter into the contrary species to what they before were, and not into one like the former. And this reasoning holds true of other changes. For he says, that from the Lacedæmonian form it changes into an oligarchy, and from thence into a democracy, and from a democracy into a tyranny; and sometimes a contrary change takes place, as from a democracy into an oligarchy, rather than into a monarchy. With respect to a tyranny, he neither says whether there will be any change in it; or, if not, to what cause it will be owing; or, if there is, into what other state it will alter. But the reason of this is, that a tyranny is an indeterminate government, and, according to him, every state ought to alter into the first and most perfect. Thus, the continuity and circle would be preserved. But one tyranny often changed into another; as at Sicyon, from Myron to Clisthenes; or into an oligarchy, as was Antileon's at Chalcis; or into a democracy, as was Gelo's at Syracuse; or into an aristocracy, as was Charilaus's at Lacedæmon and at Carthage. An oligarchy is also changed into a tyranny. Such was the rise of most of the ancient tyrannies in Sicily; at Leontium, into the tyranny of Panætius; at Gela, into that of Cleander; at Rhegium, into that of Anaxilaus; and the like in many other cities. It is absurd also to suppose, that a state is changed into an oligarchy, because those who are in power are avaricious and greedy of money; and not because those, who are by far richer than their fellow citizens, think it unfair that those who have nothing should have an equal share in the rule of the state with themselves, who possess so much. For in many oligarchies it is not allowable to be employed in money-getting, and there are many laws to prevent it. But in Carthage, which is a democracy, money-getting is creditable; and yet their form of government remains unaltered."

Whether these observations of Aristotle upon Plato be all just or not, they only serve to strengthen our argument, by showing the mutability of simple governments in a fuller light. Not denying any of the changes stated by Plato, he only enumerates

a multitude of other changes to which such governments are liable; and, therefore, shows the greater necessity of mixtures of different orders and decisive balances to preserve mankind from those horrible calamities which revolutions always bring with them.

ARGOS.

In order to form an adequate idea of the miseries which were brought upon the Greeks by continual and innumerable revolutions of government, it should be considered that the whole Peloponnesus was scarcely two hundred miles in length and one hundred and forty in breadth, not much more extensive than the smallest of the thirteen states of America. Such an inherent force of repulsion, such a disposition to fly to pieces, as possessed the minds of the Greeks, would divide America into thousands of petty, despicable states, and lay a certain foundation for irreconcilable wars.

Although Thucydides and Aristotle, as well as Homer, inform us that kingdoms were hereditary, and of limited authority, yet the limitations appear to be very confused; they were the limitations of nobles rather than of people; and the first struggles for power were between kings and archons. The kings had no standing armies; and all the forces under their authority, even when they took the field, could be commanded only by the nobles, who had their peculiar districts of land and people to govern. These were illustrious and independent citizens; like the barons who demanded the great charter, communicated to each other their grievances, and took measures to remove them. But, being generally as averse to popular as to regal power, their constant aim was an aristocracy; they accordingly extinguished monarchy, but did not secure the rights of the people. The immediate effect of this revolution only multiplied evils. Oppressed by kings, Greece was much more oppressed by archons; and, anciently too much divided, was still more subdivided under the new forms of government. Many inferior cities disdained the jurisdiction, and even the superior influence of their respective capitals; affected independent sovereignty; and each town maintained war with its neighbors. Each independent state had a right to send two members to the Amphictyonic council. The

abolition of royalty rendering the independent states more numerous, increased the number of Amphictyons to one hundred members and more; and an oath was required that the member should never subvert any Amphictyonic city. Yet every excess of animosity prevailed among the Grecian republics, notwithstanding the interposition of the Amphictyons.

Argos was founded by Danaus, the Egyptian, about the time that Athens was settled by Cecrops. At the Trojan war it was the first of the states, and ever continued the rival of Sparta. Though the royal dignity seemed more firmly settled under Agamemnon than under any other chief, yet Argos was one of the first of the states upon the continent to abolish monarchy, and that as early as on the death of Celsus, son of Temenus, the descendant of Hercules. No account of its new constitution is preserved. But, from analogy we may be convinced that a restless body of nobles overturned the monarchy; and, as it was subject to frequent and violent disorders, that the archons could not agree upon the form of their oligarchy; and set up for independency in their different districts, states, or cities, a little sooner than in other republics. The higher and lower ranks were continually at variance; the democratical faction was commonly superior; sometimes tyrants were set up over all; and once, according to Herodotus,* the slaves got possession of the city, took upon them the administration of affairs, and exercised the magistracies.

The government must have been ill constituted, as no Rhadamanthus or Minos, no Lycurgus or Solon, no Zaleucus or Charondas, nor any other legislator of superior wisdom and probity, ever acquired the power; and no fortunate coincidence of circumstances ever occurred, to unite liberty and administration, law and government, upon a stable basis. One famous tyrant, Pheidon, lineal successor of Hercules, a prince of great abilities, but no moderation, raised himself, rather than his country, to a superiority which ceased with him. For want of distinct orders and steady balances, by which the will and the forces of the people might have been subjected to the laws, Argos lost that preeminence among the Grecian states, which it had obtained under a monarchy. Every little town in Argolis was seized with the

* Lib. vi

caprice of independence, and opposed the general government, at the same time that the metropolis betrayed an ambition to domineer over the inferior towns. Civil wars ensued. Mycenæ, Trœzene, Epidaurus, and other villages of less consequence, were often conquered and garrisoned, but never subdued. Necessity taught them to unite. They reproached Argos with tyranny, and Argos them with rebellion. Union enabled them to set at defiance their capital, by means of intrigues and alliances with Lacedæmon, the never-failing resource of one party or the other in every democratical state. The pretence was, the Persian war, which Argos declined. This was called a base dereliction, and excited, by the help of Spartan emissaries, hatred and contempt in Sicyon, Naupila, Heliæa, and other towns, besides those before-mentioned. Argos alone, of all the cities in the Peloponnesus, openly espoused the cause of Athens. This single circumstance, if it was not accidental, is enough to show that this city had more sense and profound wisdom than all the rest; for Sparta was certainly then leading all Greece to destruction. In other respects the Argives discovered the same temper and the same understanding with all the others; for they led their whole forces against Mycenæ, took it by storm, decimated the inhabitants, and demolished the town. Is it not sublime wisdom, to rush headlong into all the distractions and divisions, all the assassinations and massacres, all the seditions, rebellions, and eternal revolutions, which are the certain consequence of the want of orders and balances, merely for the sake of the popular caprice of having every fifty families governed by all authority in one centre? Even this would not satisfy; the fifty families would soon dissolve their union, and nothing would ever content them short of the complete individual independence of the Mohawks; for it may be depended on, that individual independence is what every unthinking human heart aims at, nearly or remotely.

ELIS.

Eleia had been the scene of athletic games, celebrated with great pomp by assemblies of chiefs from various parts of Greece. Iphitus, a grandson of Oxylus, succeeded to the throne of Elis. Active and enterprising, but not by inclination a soldier, he was

anxious for a remedy for the disorderly situation of his country. Among all the violence, feuds, and wars, superstition maintained its empire, and the oracle of Delphi was held in veneration.

Iphitus sent an embassy to supplicate information from the deity, "How the anger of the gods, which threatened total destruction to Peloponnesus, through the endless hostilities among its people, might be averted?" He received an answer, which he had probably dictated, "That the Olympian festival must be restored. For that the neglect of that solemnity had brought on the Greeks the indignation of Jupiter and Hercules; to the first of whom it was dedicated, and by the last of whom it had been instituted." Iphitus proceeded to model his institution; and ordained that a festival should be held at the temple of Jupiter at Olympia, near Pisa in Eleia, for all the Greeks to partake in, and that it should be repeated every fourth year; that there should be sacrifices to Jupiter and Hercules, and games in honor of them; that an armistice should take place throughout Greece for some time before the commencement of the festival, and continue some time after its conclusion. A tradition was reported, that the Heraclides had appointed Oxylus to the throne of Elis and the guardianship of the temple of Olympian Jupiter, and consecrated all Eleia to the god. A reputation of sanctity became attached to the whole people of Eleia, as the hereditary priesthood of Jupiter; and secluded them from all necessity of engaging in politics or war. But it was not possible, by any institutions of religion, to destroy that elasticity given by nature to the mind of man, which excites continually to action, often palpably against men's interests, which was strong in the general temper of the Greeks, and which can never be subdued or restrained in any nation but by orders and balances. Restless spirits arose, not to be satisfied. The Eleians often engaged as auxiliaries in the wars of other states, on pretence of asserting the cause of religion; but even in that cause itself they could not agree among themselves. While monarchy subsisted in the posterity of Iphitus, as it did for some generations, Eleia continued under one government; but at length the spirit of democracy prevailed there, as elsewhere in Greece, and with the same effects. Every town claimed independency; Pisa and Elis became separate commonwealths. Olympia was situated within the territory of Pisa, on the northern bank of the river Alpheius,

which alone separated it from that city. Elis was thirty miles distant; but the Eleians retained the guardianship of the temple and superintendency of the festival. The Pisæans now disputed their right; wars arose between the two cities; each endeavored to gain allies. At one time Pheidon, Tyrant of Argos, claiming to be by birth the proper representative of Hercules, took to himself the guardianship of the temple, and presided at the games; at another time the Pisæans prevailed, and presided at some Olympiads. At length the Eleians destroyed Pisa so entirely, that not a ruin was left; and ever after, excepting in the one hundred and fourth Olympiad, when the Arcadians violently interfered, they held the presidency undisturbed.

If a democracy could ever, in any case, hold together, it would be natural to expect it in this institution of Iphitus, which, founded wholly on religion, had procured so much prosperity and veneration to his people. But it is as rational to expect that a glass bubble, with a drop of water inclosed in it, will resist the heat of the fire. The vapor within will blast it into dust and atoms.

THEBES.

Fable, and history too, relate that this city was governed anciently by kings; sixteen of whom, from Cadmus the Phœnician, who founded it, to Xanthus, are enumerated. After the death of the last, the Thebans changed their government to a democratical republic. Their orders and balances are not known; but their factions and divisions, as well as their dulness, are remembered. From the analogy of all the other Grecian states, it is probable that archons presided over the several cities of Bœotia, as their separate districts, and had a king at their head, like Ulysses in Ithaca, and Alcinous in Phæacia; that the king, whose domain was Thebes, had sometimes an inclination to favor his capital more than the subordinate towns; and that the archons grew impatient of his monarchy, and aspired at independency. The jealousy and rivalry of cities favored the factious views of the archons, and were probably fomented for that purpose.

Is it an instance of their want of penetration, or was it from necessity, that they chose the two heads of opposite factions for

their highest annual magistrates? Ismenias was one; an honest man, a friend to liberty, and consequently an advocate for an equilibrium of powers in the constitution. Leontidas, the other, was ambitious of the whole power to himself, and of governing by a council of his friends; but finding his rival more popular than himself, he sold the citadel to a Spartan general, upon condition that he and his party should rule. When this was effected he seized his colleague, and had him tried, condemned, and executed, *for caballing against the government.* The friends of Ismenias fled in a panic, and were banished by a public edict; for it seems that a revolution without banishments and confiscations, at least, is a degree of moderation and self-government of which nations are wholly incapable. The exiled citizens, who, in this case, were the honest men and friends of liberty, and among whom was Pelopidas, returned from Athens in disguise, destroyed the tyrant and his crew, and with the help of Epaminondas and his friends, regained the citadel. These two sages and heroes had now enough to do; first, to inspire a little understanding and unanimity into their fellow-citizens; then to discipline them for war, and conquer their enemies; and, at last, to frame a good constitution of government. To their immortal glory, they accomplished all but the last; but Pelopidas was killed in battle, before the war was finished; and Epaminondas grew unpopular, and was rejected by faction even from the command of the army; a sufficient proof that the aristocratical and democratical factions were nearly equal. He was reinstated, indeed, after the blunders and defeats of his successor had brought the citizens to repentance; but was slain in battle at the moment of victory. So that the Theban republic never had the benefit of his advice in the formation of a new code of laws. She had never made any figure, excepting a momentary one, under these two great men, and was at length totally destroyed by Alexander.

The ruin of Bœotia was occasioned by the finesse of Antalcidas, in his Persian treaty. The Thebans, as well as Argives, had withheld their assistance in the Persian war. Antalcidas knew that the subordinate cities of Thespiæ, Platea, Aulis, Anthemon, Larymna, Aschrœa, Coronea, Labadea, Delium, Alalkomene, Leuctra, Chæronea, all wished for independence; they accordingly rejected the jurisdiction and sovereignty of Thebes.

The Thebans solicited Sparta to take a part in their domestic quarrels; and, against her own favorite treaty, made by her artful ambassador, she accepted the proposal. The virtuous and amiable Spartan senate perceived that it was equally their interest that Argos should lose her jurisdiction over her revolted towns, and that Thebes, the rival neighbor of Athens, should recover her authority in Bœotia; but, notwithstanding partial successes, she could not regain her authority over all the cities, until Epaminondas arose, after eighty years of civil wars.

Had there been a governor in Bœotia, and a senate, and a house of representatives, composed of an equitable proportion of deputies from Thebes and all the lesser cities, — and each of these branches possessed of an independent negative in the legislature, while the whole executive was in the governor, — would these civil wars have happened? these endless contentions between the nobles and people, the capital and subordinate cities? these intrigues of one party with Athens, and another with Sparta? The very disinclination, both in Thebes and Argos, to engage in the Persian war, arose wholly from their domestic dissensions; and these from the want of judicious orders and balances.

After the abolition of monarchy in Bœotia, there was an effort to collect all authority into one centre; but the nation found, that, although laws might be thus made, they could not be so executed. There must, therefore, be an executive magistrate; but not being able to agree, in order to please both sides, the leader of each faction must be chosen. As might have been foreseen, they could not agree, and split the nation at once into two hostile armies; one of which sought the alliance of Sparta, and the other that of Athens. Thus it ever was, and ever will be, in similar cases. It is much to be regretted that Epaminondas did not live to display his talents as a legislator; the world might possibly have been blessed with something like an English constitution, two or three thousand years sooner than it was.

SYBARIS.

The city of Sybaris was a Grecian colony in Italy, planted by Achaians; and, according to Diodorus Siculus,* its beautiful

* Lib. xii. p. 6

situation between two rivers, the Crathis and the Sybaris, the extent and fertility of its territory, and the freedom of its laws, had, in a short space of time, drawn together a prodigious number of inhabitants, and greatly enriched them.

But the common fate of all nations and cities attended them. They had three parties; a chief, a better sort, and a people. The most powerful citizens were caballing, as usual, against the chief, whose name was Telys, and, whatever his character for virtue was, he appears to have had more cunning than Grecian chiefs commonly had; at least he discerned better where the balance lay; for he courted the people by flattering their follies. He excited a popular cry against the aristocratical party, drove them from the city, confiscated their fortunes and distributed them among the rest of the citizens. The exiles fled to Crotona. Telys sent ambassadors to demand them, on pain of war. Pythagoras thought the cause of his aristocratical friends just, and persuaded his fellow-citizens to refuse to deliver them up. The Sybarites marched an army; but were met by another from Crotona, with Milo, the strong man, at their head, whose reputation prevailed; the Sybarites were all massacred, and their city pillaged and left a desert. First happy effect of a government without acknowledged orders and legal balances!

Fifty-eight years afterwards, some Thessalians established themselves at Sybaris. They had not been there five years, when the Crotonians came and drove them out. Under Callimachus, archon of Athens, it was repeopled the third time, and had the name of Thurium. A populous colony was sent there, under Lampon and Xenocritus, who built a beautiful city for a capital, and twenty-five subordinate cities. But the inhabitants could not long live in good intelligence among themselves; they fell into dissensions, grew extravagant, luxurious, and effeminate to a proverb. The quarrel began in this manner: — The old inhabitants of Sybaris erected themselves into a kind of nobility, and arrogated to themselves all the public employments of any distinction, vouchsafing to the new-comers only those of least importance. They insisted, moreover, that their wives should sacrifice the first to the gods, and that the other ladies should not commence their devotions till the first had concluded. Not content with distinctions so assuming, they went farther, and took to themselves, in the distribution of the lands, all those

which were nearest the city, and left only the more distant to those whom they called foreigners. The latter being more numerous and more brave, carried their resentment so far as to put all the old families to death, and remained sole possessors of all the territory within the walls. Not having people enough left, they invited others from various parts of Greece, divided houses and lands among them, entered into alliance with Crotona, and became opulent. They divided the people into ten tribes, and established among them a democratical government, and chose for their legislator Charondas, who, having examined to the foundation the laws of all countries, chose out of them, for his country, the wisest and most convenient. Some others he added, drawn from his own meditations. His laws are lost, and, therefore, his orders and balances are not known. It is nevertheless certain, from certain regulations preserved by Diodorus, that orders and balances existed in his institution.

1. He excluded from his public councils all men who, having children, should marry a second time; and thus mortify their children with the authority of a step-mother.

2. As another check to his democracy, he ordained that all who should be convicted of calumny, should be conducted through the streets crowned with tamarin; a punishment so infamous, that several put an end to their own lives rather than submit to it.

3. He prohibited all society with wicked men; for, says he, the disposition to evil is very strong, and many of those who at first love virtue, are often drawn in, by the charms of secret seductions, to the greatest vices.

4. He ordained that all the sons of every family should learn to write and read, under masters in the pay of the public. This law alone has merit enough to consecrate to immortality the memory of this legislator, and deserves to be imitated, at least by every free people.

5. That the property of orphans should be administered by the relations of the father; but their persons and education intrusted to those of the mother.

6. All those who should refuse to take arms for their country, or quit their ranks in the army, instead of being punished by death, should be exposed three days in a public square of the city, in women's clothes.

7. To preserve his democratical arrangement, he thought it necessary to prohibit all proposals of change in his laws. His principle was, it is as advantageous to submit to the laws, as it is dangerous to subject the laws to individuals; and, therefore, in trials, he reprehended and silenced all criminals who substituted turns of eloquence and arbitrary interpretations in place of the letter of the laws, and he charged them with violating their authority and majesty. The question is, said Charondas, "Whether you shall save the law or the criminal."

8. Struck with the disorders and seditions which he had seen in many democratical cities, he ordained that no citizen should present himself in the public assembly, to propose any reformation or alteration in the law, without a halter about his neck, which he should wear till the people had deliberated and determined. If the people decreed the proposed alteration hurtful or unnecessary, the reformer should be strangled on the spot. This regulation silenced all new legislators so entirely, that only three examples occurred of any change.

All his precautions were insufficient. Returning from the country with his sword, which he had taken to defend himself against highwaymen, he found the assembly in division and confusion. He hastened to compose the tumult. One of his enemies reproached him with violating his own law, by coming armed into the assembly. Charondas, who had forgotten the sword, cried, I mean to observe and enforce the law, and plunged it into his own heart, wearied, most probably, into a contempt of life by the disorders incident to unbalanced parties.

When every legislator who has attempted a democratical establishment, has confessed its inherent tendency to immediate dissolution, by resorting to the strongest rigors against proposals of innovation, and numberless other provisions to control it, which have all been found ineffectual, is it worth while still to cherish the fond idea, when three branches are found, by experience, so effectually to check each other; when in two independent assemblies improvements and reformations may be so easily and safely proposed and adopted, and such as are not beneficial rejected?

LOCRIS.

Zaleucus was of Locris in Italy, not far distant from Sybaris. He was a disciple of Pythagoras, of noble birth, and admirable morals. Having acquired the esteem and confidence of his fellow-citizens, they chose him for their legislator. Unfortunately, little remains of his laws but their preamble. But this is in a style so superior to that of all the other legislators, as to excite regret for the loss of his code. In this preamble he declares, that all those who shall inhabit the city ought, above all things, to be persuaded that there is a God; and, if they elevate their eyes and thoughts towards the heavens, they will be convinced that the disposition of the heavenly bodies, and the order which reigns in all nature are not the work of men nor of chance; that, therefore, they ought to adore the gods, as the authors of all which life presents us of good and beautiful; that they should hold their souls pure from every vice, because the gods accept neither the prayers, offerings, or sacrifices of the wicked, and are pleased only with the just and beneficent actions of virtuous men. Having thus, in the beginning of his laws, fixed the attention of his fellow-citizens upon piety and wisdom, he ordains, above all things, that there should never be among them any irreconcilable enmity; but, on the contrary, that those animosities which might arise among them, should be only a passage to a sure and sincere reconciliation; and that he who would not submit himself to these sentiments, should be regarded as a savage in a civilized community. The chiefs of his republic ought not to govern with arrogance nor pride; nor should the magistrates be guided in their judgments by hatred nor by friendship.

This preamble, instead of addressing itself to the ignorance, prejudices, and superstitious fears of savages, for the purpose of binding them to an absurd system of hunger and glory for a family, like the laws of Lycurgus, places religion, morals, and government upon a basis of philosophy which is rational, intelligible, and eternal, for the real happiness of man in society, and throughout his duration.

The principle adopted by this legislator, as the motive to action next to the sense of duty and social obligation, was the sense of honor, like that of Lycurgus. As Zaleucus was a dis-

ciple of Pythagoras, whose favorite plan of government was a well-tempered aristocracy, we may conjecture that such was the form recommended to the Locrians. But all are lost; and certainly no argument can be drawn from them in favor of one popular assembly. If, in visiting the Sybarites and Locrians, we have found nothing in favor of M. Turgot's system, nor any thing very material against it, we have found a greater advance towards civilization than in all the laws of Lycurgus and Solon, excepting only the trial by jury, instituted by the latter; I mean the preamble of Zaleucus; and the general education to letters in schools, at the public expense, by Charondas.

ROME.

Plebeians scrambling after Patricians; or Democracy hunting down Aristocracy; or Tribunes in chase of a Senate.

We elsewhere see, in the history of Rome, with what eagerness the aristocracy pursued and demolished the monarchy. The kings are commonly reproached with tyranny, and the nobles are applauded for resistance to them; but it is clear that the nobles were as tyrannical as they; and that their eternal plots and conspiracies against the kings, their power, their crown, and their lives, were the cause and the provocation to that tyranny. It is impossible to say which were worst, the nobles or the kings; both were bad enough in general, and both frequently violated the laws, as will ever happen when there are but two branches. The people, as yet, had no adequate power to aid or control either. By the institution of Romulus, indeed, the Roman people, even the lowest class of the citizens, instead of being prohibited to engage in all kinds of labor, after the example of the Spartans, were directed to apply themselves to pasturage, agriculture, and mechanic arts. This had its natural effect; and immediately after the revolution, by which the monarchy was abolished and aristocracy set up, though we find the patricians at their usual game of encroaching on the people, yet there was a people, a numerous, hardy, courageous people, who were not disposed to submit. They soon began a resistance, and to demand more power to resist; and having obtained one concession, they required another, until they obtained an equality with the patricians.

So far they were in the right; and if the two powers could have remained equal, justice, liberty, and happiness, the effect of equal laws, might have been enjoyed. But human nature can never rest; once in motion, it rolls, like the stone of Sisyphus, every instant when the resisting force is suspended. Diodorus Siculus is very right, lib. xix., when he says: "It is of the nature of man to aspire continually at something greater than his present condition, and to wish that his power might increase, instead of decreasing or resting as it is." Dr. Ferguson, who follows very accurately Dionysius of Halicarnassus, Livy, and Polybius, will furnish us with a good account of the steps by which the Roman people proceeded to augment their own power, and diminish that of the senate, until they obtained the whole. I shall give an abridgment of the story, very nearly in Ferguson's words.[1] In their career, however, the people lost their morals and their wisdom, as they ever will in such a course, and they were ready to confer the sovereignty on the line of Cæsars, even before they had completely obtained it. Those irregularities, and that final catastrophe, were all occasioned by the imperfections in their *balance*. If the consuls had been possessed of a negative in the legislature, and of all the executive authority, and the senate and people had been made equal and independent in the first establishment of the commonwealth, it is impossible for any man to prove that the republic would not have remained in vigor and in glory at this hour.[2]

"The government of Rome," (in the two hundred and forty-fourth year from the building of the city, after the expulsion of Tarquin,) "was become wholly aristocratical. The nobles, exclusively, had the legislative, executive, and judicial power, without any third party to hold the balance between them and the peo-

[1] The following pages contain a summary of the first book of Adam Ferguson's *History of the Progress and Termination of the Roman Republic*, accompanied, however, with a running commentary, as usual, which it is difficult without collation to distinguish from the text.

During the last half century, the industry of scholars in investigating the nature and origin of the Roman government has been unwearied; and so much progress has been made, that Dr. Ferguson's work now seems but a superficial production. Nevertheless, much yet remains to be done fully to elucidate the difficulties under which the subject labors. It is to be regretted that the author's analysis of this, the most extensive and successful republican experiment ever made, should not have been more complete.

[2] "The affirmative is as difficult of proof as the negative." H.

ple; for the consuls, although they were executive magistrates, united in their persons the dignities of the state, those of judges, magistrates, and military leaders, were understood to come in the place of kings, and performed all the functions of royalty; yet they were only parts and ministers of the senate.

"While the exiled king was endeavoring, by continual invasions, to recover his power, disputes arose between the parties who had joined to expel him. Creditors, supported by the aristocracy, of which the nobles were now in full possession, became severe in the exaction of debts, or the patrons laid claim to more than the clients were willing to pay. The state was distracted at once by its enemies from abroad, and by the dissension of parties at home. The authority of the new government not being sufficient to contend with these difficulties, the senate resolved to place themselves and the commonwealth, for a limited time, under the power of a single person, under the title of dictator.

"The inferior class of the people, almost excluded from any share in the new government, soon found that, under its influence, they had more oppression to fear from their patrons, than they had ever experienced from the prince they had banished. So long as the king and the senate shared in the powers of the state, the one took part with the people, when the other attempted to oppress them; and it was the ordinary interest and policy of the prince to weaken the nobles, by supporting the plebeians against them. This effect of the monarchy still, in some measure, remained so long as the exiled king was alive, maintained his pretensions, and made the united services of the people necessary to the senate; but, upon the death of the king, the nobles availed themselves of their power, and enforced their claims on the people with extreme severity. In the capacity of creditors, they imprisoned, whipped, and enslaved, those who were indebted to them, and held the liberties and lives of their fellow-citizens at their mercy. The whole body of plebeians was alarmed; they saw more formidable enemies in the persons of their own nobility, than in the armies of any nation whatever. Many, who had already suffered under the rod of their creditors, when called upon to enlist, showed their limbs galled with fetters, or torn with stripes, which they had received by command of their merciless patrons.

"These distractions obliged the senate to have recourse to another dictator; and Valerius, who was appointed for his popularity, repelled the enemy. The senate, upon his return, not fulfilling his promises to the people, they retired to the Sacred Mountain. The senate was obliged to negotiate, to mitigate the severities against insolvent debtors, and consent to the appointment of tribunes. This was in the year 260, sixteen years after the revolution."

Had the plebeians "discontinued their collective assemblies for every purpose but elections, and increased their tribunes" to four or five hundred representatives, even this would not have been a radical cure, without separating the consuls from the senate, and giving them, or one of them, the executive power, and a negative both upon the senate and popular assembly in the legislature; but there was too much prejudice, and too little knowledge, for so great an improvement. The people contented themselves with the appointment of a leader, under the name of Tribune, who, without power effectually to protect them, had enough to head every popular tumult, and blow up every spark to a flame. An assembly of representatives would have had an equal right with the senate to propose laws, to deliberate, debate, alter, amend, improve. But the tribunes were authorized only to forbid any measure they thought injurious; but not to propose any law, or move any resolution. Not permitted to mix with the senators, they had places at the door of the senate house, as their office was felt to be a dangerous one. Their persons were made sacred; and every one was devoted to the infernal gods who should even strike them. An oath was to be taken to observe this law; and the idea of the sanctity of a tribune took such deep root, that the emperors afterwards were protected from assassins by this sacred title of Tribune.

"The college of tribunes, at first, was not limited to any number; but, in process of time, they increased from three to ten."

Patricians could not by law be elected; yet the people, to show that they never will be steady to any law, even to those most directly contrived for their benefit, sometimes departed from this.

"The tribunes were at first elected in the curiæ, where the vote of the poorest citizen was equal to that of the most wealthy. But, even here, the patricians, besides their great influence, had

even a negative on all proceedings, by holding the auspices. For this reason, it was thought necessary to alter the form of the assembly in which the tribunes were elected, to that of the tribes; and by this means to enable the people to make their election without any control from the nobles, either in virtue of the authority of the senate, or the interposition of the augurs."

These would have been real improvements of the constitution, if they had proportionally augmented the authority of the consuls at the same time; but probably there would have been as many prejudices against such a proposal among the people as in the senate. All the popular jealousies and alarms at regal authority would have been excited by demagogues in the senate as well as in the comitia; for there are in all nations aristocratical demagogues as well as democratical.

"These expedients were adopted by the senate to quiet the animosities of parties; but tended, in fact, only to render the contest between them more equal, and to multiply the subjects of dispute. The tribunes, being vested with power to assemble the people, could not long be confined to the mere negative with which they were first intrusted. The party of the plebeians, with these magistrates at their head, were then in a posture not only to preserve their right, but likewise to gain to their order continual accessions of power. Happily for the state, there was yet much ground to be gained, without transgressing the bounds of order, or the authority of equitable government. The bar of hereditary distinction was the strongest obstacle which the popular leaders in this career had to break through."

The nobles among the Romans, as well as among the Greeks, generally traced back their lineage, in some manner or other, to gods and goddesses; and the divine original of nobility, and the essential distinction between the two orders of nobles and commons, the one being believed a superior order of beings to the other, was founded in their institutions of religion, and in the popular belief; and, although some pretensions are still set up, in many parts of Europe, to the divine right of nobility, yet they are generally held in so little estimation, that a modern can hardly form an idea of the difficulty the tribunes must have found to overcome this inveterate prejudice of superstition. No personal merit, no actual service, no measure of ability or virtue, could remove, as it was pretended, the disqualification of plebeian birth.

"One of the first steps towards abolishing this distinction, was to preclude every other power in the state from a negative on their proceedings. For this purpose, it was enacted by the tribes, that no one, under pain of death, or of a fine at discretion, should interrupt a tribune while he was speaking to the people."

Nothing can be more curious than these popular efforts to get the better of their own superstitious prejudices. They could not depend upon their own firmness to support their own peculiar magistrate, till they made themselves believe that his person was sacred, as well as the other magistrates.

"Being thus provided against interruption, as they were by a former law against violence to their persons, they not only took up the complaints of their constituents, but suggested new claims to be made by them; and at every succession to office, endeavored to signalize their term by some additional establishment for the benefit of the people. They interrupted the state in its councils and wars, and hung upon the wheels of government until the grievances they complained of were redressed, or the demands they made were complied with. In order to increase the number of plebeian officers, whose aid the tribunes alleged was necessary to themselves, they, soon after their own institution, procured that of the ædiles, who were to inspect the market, and have charge of the public buildings and public shows.

"The qualifications of candidates for the office of consul, furnished, during some ages, the subject of continual debates. Civil and military transactions were constantly blended together. The senate frequently involved the state in war, in order to suspend its intestine divisions; and the people as often took occasion, from the difficulties in which the community was involved by its enemies, to extort a compliance with their own demands.

"The first subject of contention was the distribution of the corn which the senate had purchased as a provision against the famine, which the late interruption of industry and agriculture, by the secession of the people, had occasioned. Coriolanus was for compelling the people, by hunger, to part with their tribunes, and the other concessions which had been extorted from the senate. The younger nobility applauded his sentiments; but the majority were afraid of another storm, and agreed to deliver corn from the public granaries at a moderate price. The people,

however, were not appeased; they were greatly incensed against Coriolanus; and the tribunes cited him to appear before the tribunal of the people, to answer for the insult he had offered them. The senate and patricians were disposed to protect him; but expected to be able to acquit him in the comitia of the centuries, the only tribunal before which any capital accusation of a citizen had ever been tried. The tribunes, however, determined to introduce an innovation, and insisted that the people should assemble in their tribes. Coriolanus, seeing himself already condemned by this method of proceeding, withdrew, and joined the enemies of his country."

This novelty made a total change in the constitution; for "the assembly of the centuries formed an aristocracy, that of the tribes a democracy. As it was not with any precision determined by law what business should be done in one assembly, and what in the other, the patricians and plebeians, instead of balancing each other by regular checks, were in danger of rendering the administration of the state a continual scene of contradictions," which served to the last hour of the republic as an object of popular zeal, and furnished a specious pretence to ambitious and designing men. This very uncertainty, producing continual altercations and wars, produced great statesmen and warriors, no doubt.* But a regular, well-ordered constitution, will never fail to bring forth men capable of conducting the national councils and arms; and it is of infinitely more importance to the national happiness, to abound in good merchants, farmers, and manufacturers, good lawyers, priests, and physicians, and great philosophers, than it is to multiply what are called great statesmen and great generals. It is a miserable servitude, whether you call it a republic or a despotism, where the law is uncertain and unknown; and it is only under the security of certain and known laws, that arts, sciences, agriculture, commerce, and trades, can ever be made to flourish.

Another subject of dispute was soon introduced, "which served to the last hour of the republic as an object of popular

* This alludes to the following sentiment of Dr. Ferguson, which is not cited in the text.

"This singular constitution will appear to possess at least one of the highest political advantages, in being the most excellent nursery of statesmen and warriors, and in forming the most conspicuous example of national ability and success."

zeal, and furnished a specious pretence to ambitious and designing men to captivate the ears of the populace — an equal division of land, known by the name of an agrarian law."

By this was by no means meant a community of goods and lands, or an equal division of all the lands and goods; the Roman people had too much sense and honesty ever to think of introducing into practice such an absurd figment of the brain. But the Romans, during the late aristocratical times, and the wars against Tarquin, had "suffered the conquered lands to pass by connivance, occupancy, or purchase, into the hands of powerful citizens," instead of dividing them equally among the people. Spurius Cassius, the consul, who was in favor with the people, and affected still farther popularity by flattering the passions of the inferior classes, foreseeing that the tribunes would soon think of this object, determined to make a merit to himself by anticipating them. "Possessing himself some of these lands, he ostentatiously made a division of them among the more indigent citizens; and obtained an appointment of three commissioners to inquire into the evil and consider of a remedy."

"The patricians were alarmed; but Cassius had numbers on his side, and was so confident of success, that he betrayed too soon his ambitious design, by offering the freedom of the city to aliens, who, at his invitation, crowded from all parts to vote in the assemblies of the Roman people. This convinced all parties that his views were, by the means of aliens and indigent citizens, to usurp the government.[1] All parties combined against him, and he was condemned for treason. The tribunes had no sooner destroyed Cassius, than they adopted his project, and insisted on the law for the nomination of three commissioners."

[1] It is a common trick of parties to assail the motives of formidable opponents, in order to weaken their influence, if not to destroy them entirely. The result proves that the measure of Cassius was felt to be reasonable, even though he was himself sacrificed as the advocate of it. Yet it is not uncommon among popular men to push good measures from bad reasons.

The course of modern criticism has been to doubt the correctness of many of the judgments passed upon men in the ancient republics, but it can do no more than doubt. In high party times, a vanquished reformer is most likely to be branded by the victors as an incendiary and a demagogue, as on the other hand a conservative statesman, when overthrown, is liable to be handed down as unfaithful to popular government. And these judgments are made up under excitement, which leaves no room for an analysis of the merits of the questions put at issue. It is not unlikely that the best critics of ancient politics in Greece and Rome, may yet be found hereafter among the statesmen active in the struggles of America.

From this time commences a struggle between the tribunes and senate, patricians and plebeians, the various operations of which would take up too much space to relate. "The tribunes were honored in proportion to the part they took in support of the popular cause, and their animosity against the senate. Every new tribune endeavored to signalize his year, by suggesting some new point to be gained by the people. One law was obtained to substitute the assembly of the tribes for that of the curiæ, in the election of tribunes; another to exclude the patricians entirely from the assembly of the tribes. The agrarian law they frequently moved in the interval of other pretensions, or together with other claims, in order to alarm the senate, and force them to a compromise."

The powers and artifices of both parties were soon exerted in another contest, in which the people were in the right, and pursued the most rational and necessary object imaginable, — a new code of laws which should regulate the forms of judicial proceedings; yet even this was not pursued so much from the love of justice, or the spirit of liberty,[1] as to gain a point from the patricians, whose power was greatly supported by the discretionary judicial powers they had in their hands. This great object, which the English nation have pursued for so long a course of time, under the names of Folcright or Common Law, they alone have had the wisdom to accompany with prerogatives to the crown and privileges to the nobility, which have secured those two branches of the constitution; at the same time that, by establishing a body of laws and regular formal proceedings in the courts of justice, they have secured their own rights and liberties. The Roman people were not so wise; by neglecting to give any adequate prerogatives to the consuls, and by undermining the power of the senate in proportion as they introduced regular law to protect their own rights, they undermined every other power in the constitution, and devolved the whole upon themselves. In the career they lost all their integrity and morals. "They opposed an ardor not to be cooled or discouraged, or restrained

[1] It is difficult at all times to analyze the springs of popular movements. Multitudes are necessarily subject to an infinite diversity of impulses, the precise extent of each of which cannot be defined. But there is no reason in this case to suppose that the love of justice and the spirit of liberty did not animate the same breasts in which the other motive had its play. The desire for victory is an inevitable attendant upon eager contention for even the best object.

by scruples in the choice of means, to the great authority and address of the nobles. A popular party are apt to think that the rules of veracity and candor may be dispensed with, and that deceit and violence may, without any scruple, be employed in their own favor. With less honor and dignity to maintain than their adversaries, they are less afraid of imputations that detract from either; and their leaders, supported by the voice of the more numerous party, are less apprehensive of evil fame. In this contest, accordingly, fictitious plots and conspiracies were fabricated by the popular side, and fictitious designs against the liberties of the people were imputed to the patricians, in order to render them odious, and to deter them from appearing in support of their real pretensions." [1]

"The senate at last agreed to the nomination of three commissioners, to be sent to Greece, and make a collection of laws. The report they made was accepted, and the decemvirs appointed by the senate and people to compile a body of laws. These ten were intended only as a committee to prepare a draught for the consideration of the senate and people. Yet they had so much credit with the people as to be vested with a temporary sovereignty; and superseded the authority of the senate as well as the consuls; and had unlimited power over the lives and fortunes of their fellow-citizens. They presented a number of laws, engraven on ten tables or plates, containing a summary of the privileges of the people, the crimes to be punished, and the forms of judicial proceedings. They said their plan was unfinished; and, desiring a renewal of their powers, obtained it for another year. Two more tables were added, which, with the former ten, made the Law of the Twelve Tables.

"In these laws the distinction of patrician and plebeian was so great, that persons of these different orders were not permitted to intermarry. Bankruptcy was made a crime; and, without any distinction between fraud and misfortune, it exposed the insolvent debtor to the mercy of his creditors, who might put him to death, dissect, or quarter him, and distribute his members among them."

This law was brought from Greece, and shows the atrocious ideas and manners of the age. Although we have no account

[1] It is hardly reasonable in a historian of a popular government to suppose that these labors are all confined to one party.

of the law being executed in its utmost extent, we know that, in consequence of it, debtors were, by the courts of law, delivered bound into the hands of creditors, and frequently scourged and whipped in a most cruel and unmerciful manner. Giving to fathers the power of magistrates, or the power of life and death, over their children, may have some reasons assigned for it; but nothing can ever account for the people's accepting such a law of debtor and creditor among the Greeks or Romans, but the supposition that property was entirely in the hands of patricians; and that the people had the blindest superstitious opinion, that the patricians, as descendants of gods, were a superior order of beings. It is no wonder that the people, after this, often clamored for an abolition or diminution of debts. Why they never demanded an abolition of the law, is another question.

One other of these laws deserves particular notice. "In private, every family were free to worship the gods in their own way; and in public, though certain forms were required, yet there was not any penalty annexed to the omission of them, as the punishment of offences in this matter was left to the offended god." This, probably, was the source of that wise and humane toleration which does so much honor to the Romans, and reflects disgrace on almost every Christian nation.

The ardor of the people to obtain this code had nearly cost them their liberties. "The power of a magistrate was supposed to determine only by his own resignation. The decemvirs, taking advantage of this defect in the constitution, continued the exercise of their power; and the people," to show that they never can be jealous of men who are in possession of their confidence, "acquiesced in their usurpation; until the father of Virginia, by exercising his lawful authority in defence of his daughter's honor, exhibited a spectacle of horror which gave a turn to the imaginations, and aroused all the passions of the people to the expulsion of the decemvirs, as such another event had before given occasion to the abolition of monarchy.

"Patricians and plebeians now united, and a tide of mutual confidence began to flow. Two very popular persons were chosen consuls. The consecration of the tribunes was renewed, and extended to the ædiles and other inferior officers, who acted under the tribunes in preserving the rights of the people. The patricians consented to have the acts of the senate formally re-

corded, placed in the temple of Ceres, and committed to the care of the ædiles. As the consuls had been hitherto the keepers and interpreters of their decrees, and had often suppressed or carried into execution their acts at their pleasure, this was a considerable diminution of the power of the consuls.

"The comitia were of three sorts, — the curiæ, the centuries, and the tribes. The centuries, alone, in which the patricians had an undoubted majority, as well as in the senate, had as yet the authority of making laws for the commonwealth. This still preserved the aristocratical character of the republic. Now the plebeians denied the legislative authority of the senate; and the senate denied the right of the tribes to make laws. Equity required that the plebeians should have a voice in the legislature; but, instead of becoming a branch of it, instead of aiming at a deliberative or negative voice in it, by which they might concur with the senate and comitia of the centuries; or, which would have been infinitely better, with the senate and consuls as two independent branches, they obtained a separate and independent power of legislation. Hence the intricacy of this constitution; hence three distinct sources of laws, — decrees of the senate, acts of the centuries, and resolutions of the tribes, — senatus consulta, leges, plebiscita;" a source of division, distraction, and tumult, which never ceased to issue streams till the authority of the senate was wholly destroyed, and a *dominatio plebis* began.

"The plebeians, having removed these inequalities, grew so much the more impatient of those which remained. They were still excluded from the office of consul, from that of the priesthood, and were forbidden intermarriage with the nobles. In the year of the city, 308, Canuleius, a plebeian and a tribune, moved to repeal the law of the twelve tables, which prohibited the intermarriage of patricians and plebeians; and the nine other tribunes claimed that the office of consul should be held by plebeians as well as patricians.

"The senate, and the whole order of nobles, by studied delays, and by the usual artifice of involving the state in foreign wars, suspended the determination of these questions; but at length were obliged to gratify the people respecting the intermarriage of different ranks, in order to pacify them on the refusal of their claim to the consulate. To elude this demand, it was said that the sacrifices and other duties of the priesthood, many of which

were to be performed by the consul, could not, by the sacred laws of religion, be performed without profanation by persons of plebeian extraction, or by any but those of noble birth. This argument silenced the people for some time;" but neither superstition, nor the true religion, any more than education, oaths, morals, or any other tie, will long restrain an unbalanced party, urged by its interest, and stimulated by a growing passion for power. An evasion, a mere change of a word, will answer the purpose of eluding superstitious fears, and even the dictates of conscience.

"The title of Consul was changed for that of Military Tribune; and no sacerdotal function being included in the duties of this office, plebeians, though not qualified to be consuls, were elected military tribunes, with consular power. The military and sacerdotal functions had before been united; they were now separated, and, as the people thought, without profanation. But another office remained to tempt the people and their tribunes, that of Censor. The census had been a principal object of the executive power; the kings had always held it, and after them the consuls. At every period of five years, they could dispose of every man's rank, assign him his class, place him in the rolls of the senate or the knights, or strike him off of either, degrade or disfranchise him, as they thought proper. A power so important, although it had not been hitherto flagrantly abused, might easily be so; and the senate would naturally dread the admission of plebeians to it. While they admitted them, therefore to be elected tribunes, with consular power, they stipulated that the census should be separated from it, and that this charge should remain with persons of patrician birth."

The invasion of the Gauls had burnt the city, and it was thought, extinguished the republic forever. Manlius saved the capitol, and Camillus restored the commonwealth. "During a period of one hundred and seventeen years which followed, the Romans were involved in perpetual wars against the Equi, the Volsci, the Hernici, the Etruscans, and some of their own Latin confederates; yet these did not wholly suspend their internal convulsions, which gave birth to new political institutions. The plebeians, far from being satisfied with their past acquisitions, made continual efforts to extend their privileges. The tribunes, by traducing the senate, and by displaying in their

harangues the severities of the patrician creditor, and the sufferings of the plebeian debtor, still inflamed the animosity of the popular party. The republic itself was so feebly established, that ambitious citizens were encouraged, by means of factions raised among persons of the lower class, to entertain thoughts of subverting the government. In this manner, Manlius, the champion of the capitol, presuming on his merit, thought himself above the laws, and incurred the imputation of aspiring to be king. Four hundred citizens, whom he had redeemed from their creditors, and released from chains; the spoils of thirty enemies, slain by himself in battle; forty badges of honor, conferred on him by generals under whom he had served; many citizens whom he had rescued from the enemy, among whom was Servilius, the second in command to the dictator; could not save him from being thrown from the rock on which he had so lately signalized his valor."

Such was the influence of the senate; such "the treasons for which the friends of the people were to be sacrificed to the senate," as he said; and such the popular prejudice against the name of a king. Yet it is certain that the best thing the Roman people could have done at that time, would have been to have made him a king, with a negative; preserving, at the same time, their own negative, and that of the senate."[1]

The plebeians had been now above forty years in possession of a title to hold the office of consular tribune, but had not been able to prevail over the influence of the patricians at any election. By the increase of their numbers in the first and second classes, by their intermarriages with patrician families, and by the assiduity and influence of individuals who aspired to the office, they at last obtained the dignity of consular tribune for

[1] Something akin to this is expressed by Niebuhr: —

"Instead of relieving the distress, the patricians obstinately insisted on their rights, and thus arose a contest between beneficent ambition on the one hand, and the most stubborn oligarchy on the other. The natural consequence was, a very general feeling that any change would be better than such a government; and that Manlius, as a usurper, might be as useful as many a Greek tyrant. This state of things undoubtedly became very dangerous. *When a government is in a bad course, and unwilling to retrace its steps, it drives men to sin, and has much to answer for before God and man.*" *Lectures on the History of Rome*, edited by Dr. L. Schmitz, vol. i. p. 280.

The adoption of the Licinian laws seems to have been the popular reversal of the patrician verdict against Manlius. Some further comments on his case are made in the concluding chapter of this work.

one of their own order, and from thenceforward began to divide the votes of the centuries with the patrician candidates. They soon aspired to the title of consuls. Stolo and Sextius were placed in the college of tribunes, to urge this point. They proposed three laws:—1st. For relief of insolvent debtors, by cheating their creditors of part of their debts. 2dly. To limit estates in land to five hundred jugera, about three hundred acres. 3rdly. To restore the election of consuls, in place of consular tribunes, with an express provision that at least one of the consuls should be of plebeian descent. The patricians prevailed upon some of the tribunes to dissent from their colleagues, and suspend, by their negatives, all proceedings upon these laws. Licinius and Sextius, in their turn, suspended the usual election of magistrates, and put a stop to all the ordinary affairs of state. An anarchy of five years ensued. The patricians still insisted on the sacrilege and profanation that would be incurred, by suffering the rites usually performed by the consuls to pass into plebeian hands. The tribunes, to elude this mysterious objection, which laid fast hold on the superstitious minds of the people, contrived a shift. They moved, that the ordinary attendants on the sacred rites should be augmented from two to ten; and that of these one half should be named of plebeian extraction. The patricians struggled as long as they could, but were at last obliged to give way,—1st. To the acts in favor of insolvent debtors. 2dly. To the agrarian law, or limitation of property in land. 3dly. To the new establishment relating to the priesthood, and to the communication of the consulate itself to persons of plebeian rank. The plebeian party prevailed in all their points, and raised Sextius the tribune to the office of consul; and, from one step to another, they obtained all the offices, whether of prætor or ædile, of dictator or censor, to be, in process of time, filled with persons of either rank.

"The only effect it now had was favorable to the plebeians, as it limited the choice of tribunes to their own order; while, in common with the patricians, they had access to every other dignity in the state.

"In this account of the Roman constitution, we are now come nearly to that state of its maturity, at which Polybius began to admire the felicity of its institutions, and the order of its administration." The mass, however, was far from being so well com-

pacted, or the unity of power so well established, as it is in the English constitution; the senate and the popular assemblies, in their legislative capacities, counteracted one another. However, from this time forward, through a long period of wars, with Greeks, Gauls, Italians, and Carthaginians, the domestic policy of the state appears to be wise and orderly. The distinction between patrician and plebeian was become altogether nominal; the descendants of those who had held the higher offices of state were, in consequence of the preferments of their ancestors, considered as noble; and, as the plebeians now found no difficulty in obtaining the offices of state, they were continually opening the way of their posterity to the rank of nobles. The plebeians were entitled by law to claim one of the consul's seats, and frequently occupied both. The authority of the senate, the dignity of the equestrian order, and the manners of the people in general, were guarded, and in a great measure preserved, by the integrity and strict exercise of the censorial power. The wisest and most respected of the citizens, from every condition, were raised into office; and the assemblies, whether of the senate or the people, without envy and without jealousy, suffered themselves to be governed by the counsels of a few able and virtuous men. The spirit of the people was, however, in a high degree democratical; and though they suffered themselves to be governed by the silent influence of personal authority in a few of their citizens, yet they could not endure any species of uncommon preëminence, even that which arose from the lustre and well-founded pretensions of distinguished merit.

The conduct of the Romans towards the Greeks should not be forgotten; since it appears to have been copied from the policy of Antalcidas in his Persian treaty. "The states of the Achæan league, already on the decline, hastened, by the temerity and distractions of their own councils, the career of their fortunes to its termination. The Romans, even while they suffered this famous republic to retain the show of its independence, had treated its members, in many particulars, as subjects. At the close of the war with Perseus, they had cited to appear at Rome, or had taken into custody as prisoners of state, many citizens of Achaia. Of these they had detained about a thousand in different prisons of Italy. After a period of seventeen years, three hundred who remained alive were set at liberty. Polybius was

one of them. He attached himself to Scipio, the son of Emilius, and no doubt contributed much to his education and great character.

"The Romans, while they detained so many Greek prisoners, assumed the administration of affairs in Greece, and disposed of every distinction, whether of fortune or power, to their own tools. They received appeals from the judgments of the Achæan council, and encouraged its members, contrary to the express conditions of their league, to send separate embassies to Rome. The Spartans, having been forced into the Achæan confederacy, continued refractory in most of its councils. By some of their complaints at Rome, they obtained a deputation from the senate, to hear parties on the spot, and to adjust their differences. The Achæan council, incensed at this insult which was offered to their authority, proceeded to enforce their own decrees against the republic of Sparta, marched an army, and defeated the inhabitants of that city who ventured to oppose them. The Roman commissioners arriving after these hostilities, summoned the parties to assemble at Corinth, and, in the name of the senate, gave sentence, — *That Lacedæmon, Corinth, Argos, Heraclea, and Orchomenos, not having been original members of the Achæan confederacy, should now be disjoined from it;* and that all the cities which had been rescued from the dominion of Philip should be left in full possession of their freedom and independency." A war ensued, in which Metellus and Mummius defeated the Greeks, and the Achæan league was dissolved.

"The enmity and the friendship of the Romans was equally fatal. As the Achæan league was dissolved, on having incurred their resentment, so the remnant of the Spartan republic perished, in having accepted their protection." And nothing could be more just than that the Spartans should perish under an insidious policy, which they themselves had first invented, practised, and suggested to the Romans; who, under the command of Flaminius, about fifty years before this date, in order to detach the Grecian cities from Philip, proclaimed with so much ostentation, at the Isthmus of Corinth, *general independence, and the free exercise of their own laws, to all the republics of Greece.* "The Achæan league was dissolved, and all its conventions annulled. The states which had composed it were deprived of their sovereignty, subjected to pay a tribute, and placed under the govern-

ment of a person annually sent from Rome with the title of Prætor of Achaia.

But the success of the Roman arms abroad, became the source of a ruinous corruption at home. In the state itself, the governing and the governed felt separate interests, and were at variance from motives of avarice, as well as ambition. Two hundred and thirty years had elapsed since the animosities of patrician and plebeian were extinguished by the equal participation of public honors. This distinction itself was, in a great measure, obliterated, and gave way to a new one, which, under the denomination of *nobles* and *commons*, or *illustrious* and *obscure*, without involving any legal disparity of privileges, gave rise to an aristocracy, which was partly hereditary, founded on the repeated succession to honors in the same family; and partly personal, founded on the habits of high station and on the advantages of education, such as never fail to distinguish the conditions of men in every great and prosperous state. These circumstances conferred a power on the nobles, which, though less invidious, was not less real than that which had been possessed by the ancient patricians. The exercise of this power was lodged with the senate, a body which, though by the emulation of its members too much disposed to war, and ambitious of conquest, was never surpassed in magnanimity, ability, or in steadiness, by any council of state whatever.

"The people had submitted to the senate, as possessed of an authority which was founded in the prevailing opinion of their superior worth; and even the most aspiring of the commons allowed themselves to be governed by an order of men, amongst whom they themselves, by proper efforts and suitable merit, might hope to ascend. The knights, or the equestrian order, being persons possessed of estates or effects of a certain valuation, and secluded from the pursuit of political emolument or honor, formed, between the senate and the people, an intermediate rank, who, in consequence of their having a capital, and being less engaged than the senators in affairs of state, became traders, contractors, farmers of the revenue, and constituted a species of moneyed interest.

"Circumstances which appear to be fixed in the political state of nations, are often no more than a passage in the shifting of scenes, or a transition from that which a people have been, to

what they are about to become. The nobles began to avail themselves of the high authority and advantages of their station, and to accumulate property as well as honors. Citizens contended for offices in the state, as the road to lucrative appointments abroad; and when they had obtained this end, and had reigned for a while in some province, they brought back from their government a profusion of wealth ill acquired, and the habit of arbitrary and uncontrolled command. When disappointed in the pursuits of fortune abroad, they became the leaders of dangerous factions at home; or, when suddenly possessed of great wealth, they became the agents of corruption, to disseminate idleness and the love of ruinous amusements in the minds of the people. The city was gradually crowded with a populace, who, tempted with the cheap or gratuitous distribution of corn, by the frequency of public shows, by the consequence they enjoyed as members of the popular assemblies, flocked to Rome. There they were corrupted by idleness and indigence; and the order itself was continually debased by the frequent accession of emancipated slaves. A turbulent populace tyrannized, in their turn, over the masters of the world, and wreaked on the conquerors of so many nations the evils which they themselves had so freely inflicted on mankind.

"Citizens of this extraction could not for ages arrive at any places of trust, in which they could, by their personal defects, injure the commonwealth; but they increased, by their numbers and their vices, the weight of that dreg, which, in great and prosperous cities, ever sinks, by the tendency of vice and misconduct, to the lowest condition. They became a part of that faction, who are ever actuated by envy to their superiors, by mercenary views, or by abject fear; who are ever ready to espouse the cause of any leader against the restraints of public order; disposed to vilify the more respectable ranks of men, and, by their indifference on the subjects of justice or honor, to frustrate every principle that may be employed for the government of mankind, besides fear and compulsion. Although citizens of this description were yet far from being the majority at Rome, yet it is probable that they were in numbers sufficient to contaminate the whole body of the people; and if enrolled promiscuously in all the tribes, might have had a great weight in turning the scale of political councils. This effect, however, was happily prevented,

by the wise precaution which the censors had taken, to confine all citizens of mean or slavish extraction to four of the tribes. These were called the tribes of the city, and formed but a small proportion of the whole.

"Notwithstanding this precaution, we must suppose them to have been very improper parties in the participation of sovereignty, and likely enough to disturb the place of assembly with disorders and tumults. While the inferior people sunk in their characters, or were debased by the circumstances mentioned, the superior ranks, by their application to affairs of state, by their education, by the ideas of high birth and family distinction, by the superiority of fortune, began to rise in their estimation, in their pretensions, and in their power; and they entertained some degree of contempt for persons, whom the laws still required them to admit as their fellow-citizens and equals.

"In this disposition of parties, so dangerous in a commonwealth, and amidst materials so likely to catch the flame, some sparks were thrown, that soon kindled up anew all the popular animosities, which seemed to have been so long extinguished. Tiberius Gracchus, born of a plebeian family, but ennobled by the honors of his father, by his descent, on the side of his mother, from the first Scipio Africanus, and by his alliance with the second Scipio, who had married his sister, being now tribune of the people, and possessed of all the accomplishments required in a popular leader, great ardor, resolution, and eloquence, formed a project in itself extremely alarming, and in its consequences dangerous to the peace of the republic.

"Being called to account for his conduct as quæstor in Spain, the severity he experienced from the senate, and the protection he obtained from the people, filled his breast with animosity to the one, and a prepossession in favor of the other. Actuated by these dispositions, or by an idea not uncommon to enthusiastic minds, that *the unequal distribution of property, so favorable to the rich, is an injury to the poor*, he proposed a revival of the law of Licinius, by which Roman citizens had been restrained from accumulating estates in land above the value of five hundred jugera, little more than half as many acres. This was become impracticable, and even dangerous, in the present state of the republic. *The distinctions of poor and rich are as necessary, in states of considerable extent, as labor and good government. The*

poor are destined to labor; and the rich, by the advantages of education, independence, and leisure, are qualified for superior stations. The empire was now greatly extended, and owed its safety and the order of its government to a respectable aristocracy, founded on the possession of fortune, as well as personal qualities and public honors. The rich were not, without some violent convulsion, to be stript of estates which they themselves had bought, or which they had inherited from their ancestors. The poor were not qualified at once to be raised to a state of equality with persons inured to a better condition. The project seemed to be as ruinous to government as it was to the security of property, and tended to place the members of the commonwealth, by one rash and precipitate step, in situations in which they were not at all qualified to act.

"For these reasons, as well as from motives of private interest affecting the majority of the nobles, the project of Tiberius was strenuously opposed by the senate; and, from motives of envy, interest, or mistaken zeal for justice, as warmly supported by the opposite party." Acting in concert with Appius Claudius, whose daughter he had married, a senator of the family of Crassus, who was then at the head of the priesthood, and Mucius Scævola the consul, he exhausted all his art, and displayed all his eloquence in declamation. "But when he came to propose that the law should be read, he found that his opponents had procured M. Octavius, one of his colleagues, to interpose his negative, and forbid any further proceeding in the business. *Here, according to the law and the constitution, this matter should have dropped.*" But inflamed and unbalanced parties are not to be restrained by laws and constitutions. "The tribunes were instituted to defend their own party, not to attack their opponents; and to prevent, not to promote innovations. Every single tribune had a negative on the whole."

The rest of the story I must leave. The constitution thus violated, Gracchus next violated the sacred character of his colleague, the tribune. The senate were transported with indignation; violence ensued, and the two Gracchi fell. Afterwards, Marius carried the popular pretensions still higher; and Sylla might, if he would, have been emperor. Cæsar followed, and completed the catastrophe.

This commonwealth, by the splendor of its actions, the extent

of its empire, the wisdom of its councils, the talents, integrity, and courage of a multitude of characters, exhibits the fairest prospect of our species, and is the most signal example, excepting England, of the wisdom and utility of a mixture of the three powers in a commonwealth. On the other hand, the various vicissitudes of its fortune, its perpetual domestic contests and internal revolutions, are the clearest proofs of the evils arising from the want of complete independence in each branch, and from an ineffectual balance.[1]

[1] The author leaves us here without clearly defining the points in the Roman system in which the balance was defective. His observations on the same subject, scattered in the last chapter of the work, are more forcible than this analysis. Some valuable reflections upon the subject have been supplied by Lord Brougham, in his *Political Philosophy*, part ii. ch. 13, and others are to be found scattered in the pages of Niebuhr and Dr. Arnold; but a thoroughly republican and philosophical history, written by one familiar with all the phases of a popular government, remains yet to be written.

CHAPTER VIII.

ANCIENT ARISTOCRATICAL REPUBLICS.

ROME.

Dionysius Halicarnassensis, in the speech which he puts into the mouth of Valerius, has not only given us his own judgment, that the most perfect form of government is that which consists of an equal mixture of monarchy, aristocracy, and democracy, but he has repeated the same sentiment, in his own name, in other parts of his work. In the seventh section of his second book of the Roman Antiquities, he says of Romulus, that he was extremely capable of instituting the most perfect form of government. And, again; "I shall first speak of the form of government he instituted, which I look upon, of all others, to be the most self-sufficient to answer all the ends both of peace and war." This is a mixture of monarchy, aristocracy, and democracy, extolled by Polybius; and is nearly the same with that of Lycurgus, instituted at Sparta about a hundred years before. As the constitutions of Rome and Sparta lasted so many centuries longer than others of Greece and Italy, and produced effects so amazing upon the human character, we may rationally ascribe that duration and those effects to this composition, although the balance was very imperfect in both. The legal power, both of the kings and people, in both, was unequal to that of the senate, and, therefore, the predominant character in both was aristocracy. In Sparta, the influence of the monarchy and democracy was derived chiefly from the oath taken by the kings and ephori to support each other. An authority founded thus, in opinion, in religion, or rather in superstition, and not in legal power, would keep the senate in some awe, but not in any certain restraint.

Romulus divided all the people into three parts, and appointed a person of the first rank to be the chief of each of them. Then he subdivided each of these into ten others, and appointed as many of the bravest men to be the leaders of these. The greater

divisions he called *tribes*, and the lesser *curiæ*. The commanders of the tribes were called *tribuni;* and those of the curiæ, *curiones*. He then divided the land into thirty portions, and gave one of them to each curia. He distinguished those who were eminent for their birth, virtues, and riches; and to these he gave the name of *fathers*. The obscure, the mean, and the poor, he called *plebeians*, in imitation of the government at Athens, where, at that time, those who were distinguished by their birth and fortune, were called "well-born," to whom the administration of government was committed; and the rest of the people, who had no share in it, "husbandmen." Romulus appointed the patricians to be priests, magistrates, and judges. The institution by which every plebeian was allowed to choose any patrician for his patron,[1] introduced an intercourse of good offices between these orders, made the patricians emulate each other in acts of civility and humanity to their clients, and contributed to preserve the peace and harmony of Rome in so remarkable a manner, that, in all the contests which happened for six hundred and twenty years, they never proceeded to bloodshed.

The king, according to the institution of Romulus, had several important functions, namely, — 1. Supremacy in religion, ceremonies, sacrifices, and worship. 2. The guardianship of the laws, and administration of justice, in all cases, whether founded on the law of nature, or the civil law; he was to take cognizance of the greatest crimes in person, leaving the lesser to the senate; and to observe that no errors were committed in their judgments; he was to assemble both the senate and the people; to deliver his opinion first, and pursue the resolutions of the majority. Romulus, however, wisely avoided that remarkable Spartan absurdity of two kings.

The senate were to deliberate and determine, by a majority of votes, all questions which the king should propose to them. This institution, also, Romulus took from the constitution of the Lacedæmonians. The kings, in both constitutions, were so far from being absolute, that they had not the whole executive power, nor any negative upon the legislature; in short, the whole power of the government was vested in the senate.

[1] Upon this relation, as well as the story of the early kings, much has been written of late years, calculated to throw doubt upon former impressions, but not to substitute entirely clear ideas.

The people had three privileges, — to choose magistrates (yet all the great employments must be confined to patricians); to enact laws; and to determine concerning war, when proposed by the king. But the concurrence of the senate being necessary to give a sanction to their decisions, their power was not without control.

To separate the executive from the legislative power, and the judicial from both, and to give the king, the senate, and people, each a negative in the legislature, is so simple, and to us appears so obvious an improvement of this plan, that it is surprising it did not occur to Romulus as well as to Lycurgus; but, in those early times, perhaps neither kings nor nobles, nor people were willing to have their prerogatives and privileges so exactly ascertained. The nobles in both nations had almost all the influence, and were no doubt as jealous of royal as they were of popular power. It is certain that, although the government was called monarchical, it was in reality aristocratical in a high degree. There is a remarkable example of aristocratical art in the manner of obtaining the determination of the people. They were not permitted to vote in one common assembly; they were called in their curiæ; the majority of votes in a curia decided its voice; and a majority of curiæ was the resolve of the whole people.

Had Romulus died in peace, and left a son, his monarchy would probably have descended in his family. But a contest arose immediately here (as it has done in all other nations where the people had not a negative, and where the executive power has been partly in the hands of a king, and partly in a senate,) between the king and the nobles; and Romulus was put to death by the patricians for aiming, as they pretended, at more power than his share. This enabled the patricians to carry their first point; for it was always the first point of the aristocracy to make the first magistrate elective; in this they are always at first joined by the people; but, after seeing the use which the nobles make of these elections a few times, the people themselves have always made it hereditary.

Numa was chosen; a man of peace, piety, and humanity, who had address enough to make the nobles and people believe that he was married to the goddess Egeria, and received from his celestial consort all his laws and measures.

Tullus Hostilius, a man of great merit, was chosen in his stead; but after a glorious, at least a victorious, reign of thirty-two years, was murdered by the patricians, headed by Ancus Marcius, grandson of Numa by his only daughter, who thought his family right prior to that of Tullius.

Ancus was elected king, and died a natural death.

Lucius Tarquinius, after a reign of thirty-eight years, in which he had enlarged the territory, beautified the city, and shown himself worthy of the crown, was assassinated in his palace by the two sons of Ancus Marcius, who had learned the family policy. But their project was unfortunate; the people loved Lucius, execrated the instruments of the murder, banished the two sons of Ancus, and confiscated their estates.

Servius Tullius, who had married the daughter of Lucius, was now elevated to the throne by the people, much against the will of the senate and patricians, because Lucius was not one of them, but of Greek extraction. Tullius was chiefly supported by the people, always disagreeable to the patricians, who held his advancement to the throne to be illegal. The administration of Tullius is an artful system of duplicity, to preserve his character of the man of the people, and, at the same time, appease the fury of the patricians, by really undermining the authority of the people, and throwing the whole power into their hands.[1] In pursuance of his principle, to please both sides, he made excellent equitable regulations for registering the people, establishing a militia, and proportioning the burdens of war according to the property and abilities of all ranks; but he subdivided the six classes into one hundred and ninety-three centuries. The first class was composed wholly of the rich, and contained ninety-eight of the centuries. If the centuries of the first class were unanimous, as they generally were, they carried every point by a majority of three; if they disagreed, the centuries of the second class were called; if they disagreed, the third came forward; and so on, till ninety-seven centuries agreed. If the numbers continued equal, ninety-six to ninety-six, the sixth class was called,

[1] "Deinde equitum magno numero ex omni populi summa separato, reliquum populum distribuit in quinque classes, senioresque a junioribus divisit; eosque ita disparavit, ut suffragia non in multitudinis sed in locupletium potestate essent; curavitque, quod semper in republica tenendum est, ne plurimum valeant plurimi." Cicero, *De Rep.* ii. 22.

which was composed wholly of the poorest people, and contained but one century; but even the votes of the fourth class were rarely called for, and the votes of the fifth and sixth were generally useless. When the people voted by curiæ, the vote of every citizen was given, and, as the poor were most numerous, they were always sure of a large majority; but, when thus taken by centuries, that numerous body of the poor, which composed the sixth century, were wholly insignificant, and those of the fifth and fourth very nearly so. By changing the votes from curiæ to centuries, Tullius wholly changed the fundamental constitution, and threw the elections of magistrates, civil and military, the power of enacting and repealing laws, declaring war, and making peace, all into the power of the rich patricians. The people had not sense enough to see this; nor to see another thing of more importance, namely, — that the king had been driven to the necessity of this artful flattery of the patricians, by his not being independent of them, and by their sharing with him in the executive power. Tullius had two daughters, married to the grandsons of his predecessor, Aruns and Tarquinius. The patricians were still caballing against Tullius, and set up Tarquin, one of his sons-in-law, against him; but as a majority were not for his deposition, Tarquin and his impious and incestuous wife joined the cabal in the murder of her first husband and her father. Tarquin, in time, murdered on all hands, patricians and plebeians. He was expelled by Brutus.

This whole history, from Romulus to Tarquin, is one continued struggle of the noble families for the first place; and another unanswerable proof of the necessity of having three orders, and each order independent, in order to form an effectual equilibrium. The people were very little regarded by the senate or patricians; the kings only now and then courted the people for support against their rivals among the patrician families. The tyranny of Tarquin made the name of *king* odious and unpopular. The patricians, who were the principal conductors of the revolution, took advantage of this — for what? To restore and improve Romulus's plan of a mixed government? No; but to establish their favorite aristocracy upon the ruins of monarchy. Two consuls, in imitation of the two Spartan kings, were to be elected annually, by the votes of the people, which carried the name of a democratical power; but the votes were

taken by centuries, not by tribes, which made the patricians masters of the elections, and constituted an aristocracy in reality. From this moment a haughty faction of selfish patricians appears, who affected to despise the people, to reduce them to servitude, and establish a despotic oligarchy. The people had suffered their prejudices to blind them so far as to be tricked out of their king, who was at least a better friend to them than the patricians were; and now, the contests were wholly between patricians and plebeians. The former had got the consuls, and consequently the executive power, as much in their hands as ever the nobles in Venice had their doge, or as the nobles in Poland have their king.

The plebeians were now in a most wretched situation. They were obliged to serve in the wars, to keep out the Tarquins and their allies, at their own expense, which frequently obliged them to borrow money at exorbitant interest of the patricians, who had engrossed the greater part of the wealth; and, as the country was often ravaged by the enemy, many lost all their effects. Unable to pay the principal, with loads of interest accumulated upon interest, they were frequently confined in chains by their creditors, and scourged with whips; for the law, to which they had foolishly consented, had made the debtor a slave to the creditor. The people began to demand an abolition of debts; the senate appointed a dictator. A confusion of foreign wars and domestic dissensions ensues, till we come to the story so beautifully told by Livy and Dionysius, of the man who had been in twenty-eight battles, who appeared before the people, and showed on his back the bleeding scars inflicted by a merciless creditor. At this time, the patricians had plunged into their usual difficulty, a violent contest among themselves, between a furious headlong party, which always appears for an oligarchy, and the moderate men, who desire to continue the aristocracy; the young patricians generally follow the haughty Claudius, and the mild Valerius courts the people. The oligarchy prevails, and the decemvirate is established; their tyranny drives the people to the sacred mountain; and, at last, the tribunate was established.

Here is the first symptom of any system pursued by the people. This was a balance; but what kind of a balance? Nobody thought of another council, a house of representatives, who

should have a negative; and, if they had, it would not have availed without a king; for such a new assembly would soon have been either wholly subjected to the senate, or would have voted it useless. In truth, the monarchical power being suppressed, and the executive authority, as well as legislative, being now only in the senate and people, a struggle commenced between these two.

The people were on the scramble for more power; and first obtained a law, that all laws passed in their assemblies by tribes, should have equal force with those made in the assembly by centuries; then, that all posts and dignities should be enjoyed by the plebeians equally with the patricians; and that the decrees of the people should have the same force, and affect the patricians in the same manner, as those passed by the senate. All this was very just, and only brought the democracy to an equality with the aristocracy; but whenever these two are equal in legal power, numbers will soon turn the balance in favor of the democracy, unless there is a third power to intervene. Accordingly it so happened here, and the people went on from step to step, increasing their own importance, and diminishing that of the senate, until it was found shut up in Utica; but, before this, the people were divided into parties, and Cæsar, at the head of one, passed the Rubicon, that is, set the most sacred law of his country at open defiance. From this time the government became a government of men, and the worst of men.

From this example, as from all others, it appears that there can be no government of laws without a balance, and that there can be no balance without three orders; and that even three orders can never balance each other, unless each in its department is independent and absolute. For want of this the struggle was first between the king and senate; in which case the king must always give way, unless supported by the people. Before the creation of tribunes, the people were in no sense independent, and, therefore, could not support the kings. After the abolition of kings, the senate had no balance either way, and accordingly became at once a tyrannical oligarchy. When the people demanded their right, and obtained a check, they were not satisfied; and grasped at more and more power, until they obtained all, there being no monarchical power to aid the senate. But the moment the power became collected into this one centre, it

was found in reality split into three; and as Cæsar had the largest of the three shares, he instantly usurped the whole.

LACEDÆMON.

From the days of Homer to those of Lycurgus, the governments in Greece were monarchical in name and pretension, but aristocratical in reality. The archons were impatient of regal government, constantly struggling against their kings; and they had prevailed in every other city, except Sparta, to abolish the royal authority and substitute an aristocracy of archons in its place. In Lacedæmon, too, where there were eight-and-twenty archons contending against two kings, they had brought the whole country into the utmost confusion. The circumstance of two kings, which perhaps prolonged the regal power longer in Sparta than in any other city, originated in the fondness of a mother. Aristodemus, one of the descendants of Hercules, to whose share Laconia fell, upon the division of the Peloponnesus, after the return of that family from banishment, died leaving twin sons, Eurysthenes and Procles; their mother refusing to determine which had the right of primogeniture, it was agreed that both should succeed to the crown with equal authority, and that the posterity of each should inherit. The nobles took advantage of all the jealousies which arose between the two families, obliged each to court them, and from time to time to make them concessions, until the royal authority was lost; and as the archons could not agree, each party now began to court the people, and universal anarchy prevailed.

Lycurgus, of the family of Procles, and only in the tenth descent from Hercules, succeeded his brother Polydectes; but being told his brother's widow was with child, he declared himself protector only, and resigned the crown. Such a disinterested indifference to a crown in any one of royal or noble blood, was so unexampled in that age, that no wonder it was much admired and very popular. The ambitious princess, his sister, offered to marry him and remove out of his way the only competitor, by procuring an abortion. He deceived her by counterfeited tenderness; and diverted her from the thoughts of an abortion, by promising to take the disposition of the child upon himself when it should be born. The infant was sent to him, when at supper

with the principal magistrates. He took it in his arms, and cried, "A king, Spartans, is born to you," and placed it in his own seat. The company were touched at the tenderness of the scene, and fell into a transport of enthusiasm, both of piety to the blood of Hercules, and admiration of the disinterested integrity of Lycurgus, who, like an able statesman, perpetuates the memory of the event, and the joy at it, by the name with which, upon the spot, he christens the boy Charilaus, *the people's joy.* But all this exalted merit, added to his acknowledged divine descent, and the undoubted possession of royal power, were not sufficient to overawe the jealousy of the nobles, a strong party of whom joined the irritated queen and her brother, and raised continual factions against him. Weary of cabals, and stimulated with a thirst for knowledge, he determined to travel; visited Crete and Egypt, the two sources of the theology and policy of Greece; and brought home with him, on his return to his own country, Thales, the poet, and the writings of Homer, with the resolution to adopt the martial discipline and political liberty which he read in the poet, and had seen exemplified in Crete. Nothing could be better calculated than his two poets, to inspire the nation with that enthusiasm which he wanted, and confirm the belief, that kings were from Jupiter, and beloved by him, excepting the response of the oracle, which he took care to procure. "Welcome, Lycurgus, to this happy place, thou favorite of heaven! I stand in doubt whether I shall pronounce thee god or man; inclining still to think thou art a god!" *

The disorders in Sparta were now become insupportable; the kings had as little authority as the laws. All parties, except the two kings, in despair of their private schemes, applied to the great legislator, pointed out to all, by his divine original, the inspiration of Homer and Thales, his own integrity, wisdom, knowledge, and commanding authority over the minds of men, as well as his special divine mission pronounced by the oracle, to be the only man capable of new-modelling the constitution.

In Crete he had acquired a deep insight into human nature, at least he had informed himself fully of the length and breadth, the height and depth, of the passion of ambition in the human heart. That complication of affections, which is called by so many

* Herodotus.

names, the love of esteem, of praise, of fame, of glory; that sense of honor in which Montesquieu tells us monarchies are founded; which Tacitus tells us made the ancient Teutons submit quietly to be sold by their inferiors, when they had gambled away their liberty; which at this day enforces so punctual a payment of debts of honor contracted at play; which supports against all laws throughout Europe the custom of duelling, and produces more suicides than any other cause; which is commonly known by the denomination of *the point of honor*, and may with as much propriety be called ambition, Lycurgus appears to have understood better than any other legislator, and to have made the foundation of his institution. For this reason, Plato with great propriety calls it "The ambitious republic."

Lycurgus in secret consulted the nobles, but not the kings; formed a powerful party, and called an assembly of the people, before whom his friends appeared in arms. Charilaus and Archelaus were not in the secret, but found themselves obliged to submit. What is all this but a body of nobles completing, by the aid of Lycurgus, that abolition of monarchy which they had been pursuing for ages, unrestrained by any legal check in the people, and unresisted by any adequate power in the crown? But what was his new institution?

In compliance with old prejudices, and from attachment to his family, he confirmed the two families on the throne, established the hereditary descent of the crown, but limited its authority. The kings were to continue high priests, to be commanders-in-chief of the armies, and presidents of the senate. Charilaus and Archelaus, terrified by the fate of all the other kings of Greece, agreed to accept of a certain, though limited authority, in lieu of pretensions more absolute and more precarious.

The ancient dignities of the nobles were confirmed and enlarged. A senate of eight-and-twenty of their chiefs was formed, at the head of whom the two kings were placed. To the people he committed the election of future senators. But as the present twenty-eight were for life, and the influence of kings and senators would be commonly used with great unanimity, in favor of the eldest son, to fill up a vacancy made by the death of his father; and as the people were not permitted to debate, their choice was perhaps * little more than a consent by acclamation to

* "No authority for this 'perhaps.'" S.

a nomination made by the king, and amounted to the same thing with a hereditary house of peers. To this senate the whole executive power was committed, and the most important part of the legislative; for as all laws were to originate there only, they had a negative before debate. Here is indeed all authority nearly collected into one centre, and that centre the nobility; for the king was but the first among equals, having no negative upon the senate.

If the legislator had rested here, his institution would have been in effect a simple hereditary oligarchy, possessed of the whole legislative, executive, and judicial power, and probably as restless as ever, to reduce the kings to elections for life or years, then to take from them the power of religion, the command of armies, and lastly to change the title from king to archon, or from the family of Hercules to other houses. With a view to counterbalance this dangerous authority, he instituted assemblies of the people, but intrusted them only with the power of confirming or rejecting what the senate proposed, and expressly forbade them all debate. The citizens were to give their simple ayes or noes, without being allowed to speak, even so far as to give a reason for their vote. He instituted, moreover, as a farther check upon the senate, five magistrates to inspect the administration and maintain the constitution; to convoke, prorogue, and dissolve both the greater assembly of the people, composed of nine thousand inhabitants of the city, and the lesser, consisting of thirty thousand inhabitants of the country or inferior villages. These magistrates were called the *ephori*, and were to be annually appointed. But the lawgiver saw that the king and people were both too weak, and the senate would still have power to scramble after both; he therefore contrived a kind of solemn alliance to be perpetually renewed between the monarchical and democratical branches, by which the senate might be awed into moderation. He ordered an oath to be taken every month, by the kings and the ephori. The former swore to observe the laws, and the latter swore, for themselves and the people whom they represented, to maintain the hereditary honors of the race of Hercules, to revere them as ministers of religion, to obey them as judges, and follow them as leaders. This was indeed a balance founded in opinion and in religion, though not a legal and independent check; as it was not a negative in either.

In this constitution, then, were three orders, and a balance, not indeed equal to that of England, for want of a negative in each branch; but the nearest resembling it of any we have yet seen. The kings, the nobles, the senate, and the people, in two assemblies, are surely more orders than a governor, senate, and house. The balance here attempted was as strong as religion operating on human nature could make it, though not equivalent to a negative in each of three branches. Another balance was attempted, in the rigorous separation of the city from the country, in two assemblies. It avoided the danger of jealousies between town and country in the deliberations of the people, and doubled the chances both of the monarchy and democracy, for preserving their importance in case of encroachments by the senate. If the senate and nobles should prevail in one assembly of the people, so far as to carry any unconstitutional point, the kings and ephori would find a resource in the other to lead them back. The Lacedæmonian republic may then, with propriety, be called monarchical, and had the three essential parts of the best possible government; it was a mixture of monarchy, aristocracy, and democracy. It failed, however, in that essential particular, the balance. The aristocracy had a legal power so eminent above that of king or people, that it would soon have annihilated both, if other precautions had not been taken, which destroyed all the real merit of this celebrated institution.

That the glory of the descendants of Hercules and of their republic might be the pride of every citizen, and that a superstitious attachment to both might be perpetuated, it was necessary to extinguish every other appetite, passion, and affection in human nature. The equal division of property; the banishment of gold and silver; the prohibition of travel and intercourse with strangers; the prohibition of arts, trades, and agriculture; the discouragement of literature; the public meals; the incessant warlike exercises; the doctrine that every citizen was the property of the state, and that parents should not educate their own children; although they served to keep up the constant belief of the divine mission of Lycurgus, and an enthusiastic passion for the glory of the republic, and the race of Hercules; and although they are celebrated by the aristocratical philosophers, historians, and statesmen of antiquity; must be considered as calculated to gratify his own family pride rather than promote

the happiness of his people. Four hundred thousand slaves must be devoted to forty thousand citizens; weak and deformed children must be exposed; morality and humanity, as well as all the comforts, elegancies, and pleasures of life must be sacrificed to this glaring phantom of vanity, superstition, and ambition. Separated from the rest of mankind, they lived together, destitute of all business, pleasure, and amusement, but war and politics, pride and ambition; and these occupations and passions they transmitted from generation to generation, for seven hundred years; as if fighting and intriguing, and not life and happiness, were the end of man and society; as if the love of one's country and of glory were amiable passions, when not limited by justice and general benevolence; and as if nations were to be chained together forever, merely that one family might reign among them. Whether Lycurgus believed the descent of his ancestor from Jupiter, the divine inspiration of Homer and Thales, or the divinity of the Oracle, any more than Mahomet believed his divine mission, may well be doubted. Whether he did or not, he shackled the Spartans to the ambitious views of his family for fourteen successions of Herculean kings, at the expense of the continual disturbance of all Greece, and the constant misery of his own people. Amidst the contradictions of ancient and modern writers, that account has been followed concerning the institution of the ephori, which appears most favorable to Lycurgus.[1] The Roman tribunes, and perhaps the Venetian inquisitors, were borrowed from this institution.

Human nature perished under this frigid system of national and family pride. Population, the surest indication of national happiness, decreased so fast, that not more than one thousand old Spartan families remained, while nine thousand strangers had intruded, in spite of all their prohibitory laws. The conquest of Athens gave them a taste of wealth, and even the fear of the penalty of death could not restrain them from travelling. Intercourse with strangers brought in foreign manners. The ephori were sometimes bribed. Divisions arose between the two kings, Agis and Leonidas; one joined with the people, the

[1] "That opinion is continually gaining ground, which in the main regards Lycurgus as the regulator of existing institutions, and in particular instances only, as the author of original laws." Wachsmuth, *Historical Antiq. of the Greeks*, vol. i. p. 322.

other with the nobles, and the sedition proceeded to blood. Kings became so fond of subsidies from foreign powers, that Agesilaus received them from a King of Egypt, and his enemy at the same time. Agis was murdered by the order of the ephori, who, instead of honoring the blood of Hercules, according to their oath, took the sovereign power into their own hands. Here the balance broke; Cleomenes, who endeavored, like Agis, to restore the old laws and maxims, fell a sacrifice; and nothing appears afterwards in the history of Sparta but profligacy, tyranny, and cruelty, like that in Rome under the worst of the Cæsars.

The institution of Lycurgus was well calculated to preserve the independence of his country, but had no regard to its happiness, and very little to its liberty. As the people's consent was necessary to every law, it had so far the appearance of political liberty; but the civil liberty of it was little better than that of a man chained in a dungeon — a liberty to rest as he is. The influence of this boasted legislation on the human character was to produce warriors and politicians, and nothing else. To say that this people were happy, is to contradict every quality in human nature except ambition. They had no other gratification. Science and letters were sacrificed, as well as commerce, to the ruling passion; and Milton had no reason to "wonder how museless and unbookish they were, minding nought but the feats of war;" since it was not so much because Lycurgus was "addicted to elegant learning, or to mollify the Spartan surliness with smooth songs and odes, the better to plant among them law and civility," that he brought the scattered works of Homer from Ionia, and Thales from Crete; but merely to propagate his own and his family imposture. The plan was profound, and means were with great ability fitted to the end; but, as a system of legislation, which should never have any other end than the greatest happiness of the greatest number, *saving to all their rights*, it was not only the least respectable, but the most detestable in all Greece. To do it justice, however, it is much to be desired, that exercises like those established by Lycurgus, running, wrestling, riding, swimming, skating, fencing, dancing, should be introduced into public and private education in America, which would fortify the bodies and invigorate the minds of youth; instead of those sedentary amusements which debilitate, and are taking entire possession of society all over the

world. The ladies, too, might honor some of these entertainments, though not all, with their presence and participation, to the great advantage of their own health, and that of posterity, without injury to their charms or their reputations. But, above all, the existence of an all-perfect Intelligence, the parent of nature, the wise and moral ruler of it; the responsibility of every subordinate intellectual and moral agent; a future state of rewards and punishments; and the sacred obligation of oaths, as well as of the relative duties of social life, cannot be too clearly fixed by rational arguments in the minds of all the citizens. In this respect Lycurgus merits praise.

But, as a civil and political constitution, taken all together, it is infinitely inferior to another, which Americans have taken for their model. The English constitution is the result of the most mature deliberation on universal history and philosophy. If Harrington's council of legislators had read over the history, and studied the constitution of every nation, ancient and modern, remarked the inconveniences and defects of each, and bent the whole force of their invention to discover a remedy for it, they would have produced no other regulations than those of the English constitution, in its theory, unless they had found a people so circumstanced as to be able to bear annual elections of the king and senate. This improvement, the Americans, in the present stage of society among them, have ventured on; sensible, however, of the danger, and knowing perfectly well a remedy, in case their elections should become turbulent. Of this, at present, there is no appearance.

CROTONA.

Pythagoras, as well as Socrates, Plato, and Xenophon, was persuaded that the happiness of nations depended chiefly on the form of their government. They were fully sensible of the real misery, as well as dangerous tendency, both of democratical licentiousness and monarchical tyranny; they preferred a well-tempered aristocracy to all other governments. Pythagoras and Socrates, having no idea of three independent branches in the legislature, both thought, that the laws could neither prevent the arbitrary oppressions of magistrates, nor turbulent insolence of the people, until mankind were habituated, by education and

discipline, to regard the great duties of life, and to consider a reverence of themselves, and the esteem of their fellow-citizens, as the principal source of their enjoyment. In small communities, especially where the slaves were many, and the citizens few, this might be plausible; but the education of a great nation can never accomplish so great an end. Millions must be brought up, whom no principles, no sentiments derived from education, can restrain from trampling on the laws. Orders of men, watching and balancing each other, are the only security; power must be opposed to power, and interest to interest. Pythagoras found this by experience at Crotona, where the inferior ranks, elated with the destruction of Sybaris, and instigated by an artful, ambitious leader, Cylon, clamored for an equal partition of the conquered territory. This was denied them, as inconsistent with an aristocratical government; a conspiracy ensued against the magistrates, who were surprised in the senate-house, many put to death, and the rest driven from their country. Pythagoras was one of the banished, and died soon afterwards, in extreme old age, at Metapontum. The Crotonians had soon cause to repent their insurrection; for they were defeated, with all their forces, by the Locrians and Rhegians, with smaller numbers.

The other Greek cities of Italy, which had imitated the example of Crotona, in deposing their magistrates, were harassed with wars against each other, and against their neighbors. In consequence of these distresses, the disciples of Pythagoras again recovered their reputation and influence; and about sixty years afterwards, Zaleucus and Charondas, the one in Locris, and the other in Thurium, revived the Pythagorean institutions. In forty years more, a new revolution drove the Pythagoreans entirely from Italy, and completed the misery of that beautiful country. Thus, experience has ever shown, that education, as well as religion, aristocracy, as well as democracy and monarchy, are, singly, totally inadequate to the business of restraining the passions of men, of preserving a steady government, and protecting the lives, liberties, and properties of the people. Nothing has ever effected it but three different orders of men, bound by their interests to watch over each other, and stand the guardians of the laws. Religion, superstition, oaths, education, laws, all

give way before passions, interest, and power, which can be resisted only by passions, interest, and power.

It is no wonder that M. Turgot should have entertained very crude conceptions of republican legislation; it is a science the least understood of any in the whole circle. All other orders of men of letters in Europe, as well as physicians, for a long time, have thought it "*litteræ nihil sanantes.*" It is a kind of erudition which neither procures places, pensions, embassies, chairs in academies, nor fame nor practice in the pulpit, at the bar, nor in medicine. A minister of state, of great abilities and merit, as well as reputation, advanced to the head of the affairs of a respectable monarchy, by one of the greatest princes that have ever lived, I mean the Baron de Hertzberg, has, within a few years, set an example, in a royal academy of sciences, of inquiry into this subject. In a learned and ingenious discourse,[1] delivered by himself, he has attempted to show the advantages of simple monarchy over all kinds of republican governments, even that best species of them, limited monarchies. But did this worthy minister expect that any of his brother academicians would contest with him the merits of such governments? Men of letters are not fond of martyrdom in this age, nor of ruining their reputations. It is not, however, my design to discuss any questions at present concerning absolute monarchies, though the principles I contend for might be traced through the history of every monarchy and empire in Europe. Even in these there are orders, checks, and balances contrived, at least against abuses in administration, and for the preservation of the laws.

[1] "Sur la forme des gouvernemens, et quelle en est la meilleure?"

This dissertation was read at Berlin, on the twenty-ninth of January, 1784, the sixty-third anniversary of the birthday of Frederic II. Of course, as Baron Hertzberg was the King's minister, it is not surprising that he proceeds to assume the government of Prussia to be one of the best in the world, and one "which will serve as a model for princes and for centuries to come."

The main proposition is, that "a hereditary monarchy, tempered by good fundamental laws, adapted to the situation of a country and the character of a nation, is that form of government best fitted to create and to perfect the happiness of men, of societies, and of nations."

There is no attempt made in it to show the nature of the foundation upon which the laws, tempering the absolute power of such a sovereign as Frederic II., are to rest. Neither is the texture of the argument, in support of his proposition, much stronger than is that of an ordinary oration, delivered on the fourth of July, in America, in favor of a republic. Eulogy is equally the purpose of both.

The science of government has received very little improvement since the Greeks and Romans. The necessity of a strong and independent executive in a single person, and of three branches in the legislature instead of two, and of an equality among the three, are improvements made by the English, which were unknown, at least never reduced to practice, by the ancients. Machiavel was the first who revived the ancient politics. The best part of his writings he translated almost literally from Plato and Aristotle, without acknowledging the obligation; and the worst of the sentiments, even in his *Prince*, he translated from Aristotle, without throwing upon him the reproach. Montesquieu borrowed the best part of his book from Machiavel, without acknowledging the quotation. Milton, Harrington, Sidney, were intimately acquainted with the ancients and with Machiavel. They were followed by Locke, Hoadley, &c. The reputation which is to be acquired by this kind of learning may be judged of by the language of Mr. Hume: — "Compositions the most despicable, both for style and matter, such as Rapin Thoyras, Locke, Sidney, Hoadley, &c., have been extolled and propagated and read, as if they had equalled the most celebrated remains of antiquity." * Such is the style in which this great writer speaks of writings which he most probably never read. But although the time is long since passed when such writings were extolled, propagated, or read, the contempt of them is as fashionable, as likely to procure places and pensions, and to make a book sell now, as it was when Mr. Hume wrote.†

M. Turgot was as little conversant in this kind of erudition as Mr. Hume. The former, however, was a lover of liberty; but it was of that kind of liberty which he meditated to introduce into France, and could reconcile with a simple monarchy. He was

* *History of England*, chap. lxxi. *Concluding Observations.*

† The facts here given relative to Venice, are taken from the *Abbé Laugier* and *Moore's Travels;* those relative to the ancient republics, excepting the authorities already quoted, are taken from Robertson, Montagu, Potter, the *Universal History*, and especially from Mitford, Gillies, and Ferguson, three very valuable and elegant productions, which deserve to be carefully studied by all America. I have made free use of their expressions as well as reflections, without noting them.

[The enumeration of these authorities will prove to most students of the present day only a landmark of progress in the knowledge of ancient history; a field in which the Germans have most particularly distinguished themselves during the present century. Ed.]

too good a subject to think of introducing a free constitution of government into his own country. For the liberty of commerce, the liberty of religious sentiments, and the personal liberty of the subject, such as are established by the laws, in a monarchy, he was an enthusiast; and enthusiasm for liberty, the common cause of all mankind, is an amiable fervor, which is pardonable even when it is not according to knowledge. But he was neither an enthusiast for a free constitution of government, nor did he know in what it consisted.

CHAPTER IX.

ANCIENT MONARCHICAL REPUBLICS.

ANCIENT GERMANS.

The ancient German nations, mentioned by Tacitus, had among them at least two sorts of government. One was monarchy; and the king was absolute, as appears by these words:— "Exceptis iis gentibus quæ regnantur; ibi enim et super ingenuos, et super nobiles, ascendunt libertini; apud ceteros, impares libertini libertatis argumentum sunt."* The other species of government was aristocracy; for though there was a mixture of monarchy, aristocracy, and democracy, yet the power of the king and people was so feeble, and that of the nobles, as comprehended under the titles of princes, dukes, and counts, was so predominant, that the government must be denominated aristocratical. "De minoribus rebus principes consultant, de majoribus omnes; *ita tamen*, ut ea quoque, quorum penes plebem arbitrium est, apud principes pertractentur." If those things which were most clearly in the power of the people, were first discussed among the nobles, the reference to the people afterwards seems to have been rather a communication to them of the result of the senate, than a submission of it to the popular judgment.[1]

* There cannot be a stronger proof than this, that the monarchy was of the most absolute kind, that it was indeed a simple despotism; and Tacitus himself gives the explanation of it, in his account of the origin of this kind of slavery: "Aleam sobrii inter seria exercent, tanta lucrandi perdendive temeritate, ut, cum omnia defecerunt, extremo ac novissimo jactu, de libertate et de corpore contendant. Victus voluntariam servitutem adit; quamvis junior, quamvis robustior, alligari se ac venire patitur. Ea est in re pravâ pervicacia; ipsi fidem vocant. Servos conditionis hujus per commercia tradunt, ut se quoque pudore victoriæ exsolvant.

"Libertini non multum supra servos sunt, rarò aliquod momentum in domo, nunquam in civitate, exceptis duntaxat iis gentibus quæ regnantur," &c. If in these nations those freedmen, who were nothing in the others, neither in the family or the state, were held in more estimation and advanced to more power than the citizens, even than the nobles, these kings must have been despots in the strictest sense of the word; otherwise, neither nobles nor people would have suffered the indignity. Tacitus, *Germania*, c. xxv.

1 "But then it could not be '*penes plebem arbitrium*,' for this proves that the business was still according to the people's *will*, after the great men or *principes*

The nature and extent of the royal dignity and authority appears from these words: — " Reges ex nobilitate sumunt; nec regibus infinita aut libera potestas." Kings were taken[1] from the nobility, or kings were chosen for their noble descent; so that ordinarily the office descended to the next of kin. But it is here expressly ascertained that their power was neither unlimited nor independent. They had no negative, and might in all things be overruled, at least by the nobles and people conjointly.

The nature and extent of the aristocratical dignities and authorities may be collected from what follows: — " Duces ex virtute sumunt; et duces exemplo potius quam imperio; si prompti, si conspicui, si ante aciem agant, admiratione præsunt." The feudal hierarchy,[2] even in these early times, was fully established, although it was afterwards enlarged. The titles of dukes and counts, the rank and power they conferred, descended in families, although there was the bare formality of an election in the grand council. "Arma sumere, non antè cuiquam moris, quàm civitas suffecturum probaverit; tum, in ipso consilio, vel principum aliquis, vel pater, vel propinquus, scuto frameâque juvenem ornant. Insignis nobilitas, aut magna patrum merita, principis dignationem etiam adolescentulis assignant." " When the young men were first admitted into public society, it was in the great council; when some one of the dukes, or the father, or

had debated the matter. The princes had a right to *advise*, but not to determine for the people; for the *arbitrium* was *penes plebem*, in the people's own power." S.

[1] " Not 'were taken,' nor 'were chosen,' for the verb is active, not passive, and must, therefore, have a very different construction; so that the nobilitas here mentioned must mean mental nobility, or personal virtue and honor; and not hereditary honor." S.

This is not the construction of Montesquieu, who says in reference to the same passage, —

" Tacite dit que dans le choix de leur roi ils se déterminoient par sa noblesse et dans le choix de leur chef par sa vertu. Voilà les rois de la première race et les maires du palais; les premièrs étoient héréditaires, les seconds étoient électifs." *De l'Esprit des Loix*, livre 31, c. iv.

A remarkable instance of the sense attached to the word by Tacitus, is found in the sixth book of his *Annals*, where, speaking of Manius Lepidus, he says, —

" Neque nobilitas diutiùs demonstranda est; quippe Æmilium genus fecundum bonorum civium, et qui eâdem familiâ corruptis moribus, illustri tamen fortunâ egêre."

[2] " The word hierarchy seems improperly applied in this place; but with respect to the supposed hereditary nobility or dukes of those times, the preceding Latin quotation proves a contrary doctrine; the duces surely were not dukes, that is, not hereditary titled dukes, but mere leaders, by the example of their valor, rather than their authority." S.

other relation, adorned the youth with arms. And if he is of very noble birth, or his father has great merit, the dignity of a duke is assigned to him, young as he is." From this it is pretty clear that the crown, as well as the titles of dukes and counts, descended in the family line;[1] although the formality of an admission into council was kept up. The nobles, among whom the king was little more than the first among equals, at least he was not more superior to the dukes than the dukes were to the counts, had the game in their own hands, and managed a rude

[1] "And the counts have as little foundation as the dukes. The comites and comitatus mean here the whole body of companions, or the whole band or company of each leader. See the next page, which shows the sense of comitatus, and p. 565 shows the sense of comites." S.

Mr. Hallam has examined this subject with his usual fidelity, and expresses what is probably the correct meaning of the word: —

"There has been some dispute about the origin of nobility in France, which might perhaps be settled, or at least better understood, by fixing our conception of the term. In our modern acceptation, it is usually taken to imply certain distinctive privileges in the political order, inherent in the blood of the possessor, and, consequently, not transferable like those which property confers. Limited to this sense, nobility, I conceive, was unknown to the conquerors of Gaul, till long after the downfall of the Roman empire. They felt no doubt the common prejudice of mankind in favor of those whose ancestry is conspicuous, when compared with persons of obscure birth. Though I do not think that the tribes of German origin paid so much regard to genealogy as some Scandinavian and Celtic nations, there are abundant traces of the respect in which families of known antiquity were held among them."

And further on, —

"Although in the lapse of four centuries between the ages of Tacitus and Clovis, some change may have been wrought by long intercourse with the Romans, yet the foundations of their political system were unshaken.

"The kingdom of Clovis was divided into a number of districts, each under the government of a count, a name familiar to Roman subjects, by which they rendered the *graf* of the Germans. The authority of this officer extended over all the inhabitants, as well Franks as natives. It was his duty to administer justice, to preserve tranquillity, to collect the revenues, and to lead, when required, the free proprietors into the field. The title of a duke implied a higher dignity, and commonly gave authority over several counties. These offices were originally conferred during pleasure; but the claims of a son to succeed his father would often be found too plausible or too formidable to be rejected; and it is highly probable that, even under the Merovingian kings, those provincial governors had laid the foundations of that independence which was destined to change the countenance of Europe."

To which Mr. Hallam appends the following as part of a note: —

"That the offices of count and duke were originally but temporary, may be inferred from several passages in *Gregory of Tours;* as l. v. c. 37, l. viii. c. 18. But it seems by the *Laws of the Alemanni*, c. 35, that the hereditary succession of their dukes was tolerably established at the beginning of the seventh century, when their code was promulgated. The Bavarians chose their own dukes out of one family, as is declared in their laws; tit. 11, c. i. and c. xx. &c. &c.

View of the State of Europe during the Middle Ages, part ii. chapter i.

people as they pleased. This will appear probable from other passages:—"Cæteri robustioribus, ac jampridem probatis, aggregantur; nec rubor inter comites aspici. Gradus quinetiam et ipse comitatus habet, judicio ejus, quem sectantur. Magnaque et comitum æmulatio, quibus primus apud principem suum locus; et principum, cui plurimi et acerrimi comites. Hæc dignitas, hæ vires, magno semper electorum juvenum globo circumdari, in pace decus, in bello præsidium; nec solùm in suâ gente cuique, sed apud finitimas quoque civitates, id nomen, ea gloria est, si numero ac virtute comitatus emineat; expetuntur enim legationibus, et muneribus ornantur, et ipsâ plerumque famâ bella profligant.

"Cum ventum in aciem, turpe principi virtute vinci; turpe comitatui, virtutem principis non adæquare. Jam verò infame in omnem vitam, ac probrosum, superstitem principi suo ex acie recessisse. Illum defendere, tueri, sua quoque fortia facta gloriæ ejus assignare, præcipuum sacramentum est. Principes pro victoriâ pugnant; comites pro principe. Si civitas, in quâ orti sunt, longâ pace et otio torpeat, plerique nobilium adolescentium petunt ultro eas nationes quæ tum bellum aliquod gerunt; quia et ingrata genti quies, et faciliùs inter ancipitia clarescunt, magnumque comitatum non nisi vi belloque tueare; exigunt enim principis sui liberalitate illum bellatorem equum, illam cruentam victricemque frameam. Nam epulæ, et quamquam incompti, largi tamen apparatus pro stipendio cedunt. Materia munificentiæ per bella et raptus. Nec arare terram, aut expectare annum, tam facilè persuaseris, quàm vocare hostes et vulnera mereri; pigrum quinimmo et iners videtur sudore acquirere, quod possis sanguine parare."

When the foregoing ties, by which the people or the common soldiers were attached to the nobles, and the young and inferior nobles to the superior, are considered, a better judgment may be formed of the authority which the people really had in the grand council or national assembly.

The powers and privileges of the people, in assembly, appear from the following passages:—"Coeunt, nisi quid fortuitum et subitum inciderit, certis diebus, cùm aut inchoatur luna, aut impletur; nam agendis rebus hoc auspicatissimum initium credunt. Illud ex libertate vitium, quòd non *simul nec ut jussi conveniunt*, sed et alter et tertius dies cunctatione coeuntium absumitur." By

this it should seem that the people were so far from esteeming the privilege of meeting, that the king and nobles could scarcely get them together.[1] They had such an aversion to these civil and political deliberations, that the chiefs could hardly collect them to receive their orders: "Ut turbæ placuit, considunt armati. Silentium per sacerdotes, quibus tum et coercendi jus est, imperatur. Mox *rex*, vel *princeps*, prout ætas cuique, prout nobilitas, prout decus bellorum, prout facundia est, audiuntur, auctoritate suadendi magis quàm jubendi potestate. Si displicuit sententia, fremitu aspernantur; sin placuit, frameas concutiunt." Here is some appearance of popular liberty. But when it is considered that the nobles were probably all the speakers; that the numbers were not counted, nor voices distinctly taken; assent expressed by a clash of arms, and dissent by a murmur or a groan; and especially the dependence of the people on their leaders, and attachment to them by oath; we may consider these assemblies rather as called to receive the proclamation of the laws or minds of the nobles, than as any effectual democratical check. There was one thing, however, of great importance done in these assemblies, — judges, the posse comitatus, and juries were here appointed to administer justice. "Eliguntur in iisdem conciliis et principes, qui jura per pagos vicosque reddunt. Centeni singulis ex plebe comites,[2] consilium simul et auctoritas, adsunt." An hundred commoners attended the judge, and out of these were juries appointed to give their opinion, "consilium;" and others, or perhaps the same, to afford their assistance, "auctoritas," in putting the sentences and judgment into execution.

From other particulars related by Tacitus, it is very probable there had been communications between Germany and Greece; from the worship of Hercules, Mars, Minerva, &c.; if not from the altar of Ulysses, and the name of Laertes, and the other monu-

1 "On the contrary, the text declares that they are not summoned at all." S.

2 "The comites mentioned in the preceding page were equally commoners, or else he might as well have deemed these counts." S.

That there was a difference between the offices referred to appears clear, from the *Laws of the Alemanni*, tit. xxxvi. leg. 1. "Conventus secundum antiquam consuetudinem fiat in omni centenâ coram *comite*, aut suo misso, et coram *centenario* ipsum placitum fiat."

Tit. xxxvi. leg. 2. "Ipsum placitum fiat de sabbato in sabbatum, aut quali die *comes*, aut *centenarius* voluerit." See Brotier's note to the twelfth chapter of *Tacitus on the Germans*.

ments, and inscriptions in Greek letters, of which he speaks more doubtfully. However this may have been, there is a remarkable analogy between these political institutions of the Germans, and those described by Homer in the times of the Trojan war. It was, in both, the prerogative of the king to lead in war and to rule in peace; but it is probable he was not fond of deliberating, any more than of fighting, without company; and though he may have done both sometimes, yet numbers of his followers were ready to attend him in either. The nation acknowledged him for their leader; but they were accustomed, on great occasions, to assemble, and, without any studied form of democracy, took the sovereignty upon themselves, as often as their passions were strongly enough affected to unite them in a body. The superior classes, among themselves, came as naturally to hold their meetings apart; and assembled frequently, when the occasion was not sufficient to engage the attention of the whole. There is one remarkable difference between the Germans and the Greeks. Among the former, the priests were a distinct body, and seem to have had more decisive authority than the kings, nobles, or people in the general assemblies, — "Silentium per sacerdotes, quibus tum et coercendi jus est, imperatur;" whereas, among the latter, the kings were themselves at the head of the priesthood.

In this second kind of German governments, we see the three orders, of king, nobles, and commons, distinctly marked; but no balance fixed; no delineation of the powers of each; which left room for each to claim the sovereignty, as we know they afterwards did; at least the king and the nobles claimed and contended for it for many ages; the people sometimes claimed it, but at last gave it up to the king, as the least evil of the two, in every country except England.

Before we proceed to the Greeks, we may even mention the savages. Every nation in North America has a king, a senate, and a people. The royal office is elective, but it is for life; his sachems are his ordinary council, where all the national affairs are deliberated and resolved in the first instance; but in the greatest of all, which is declaring war, the king and sachems call a national assembly round a great council fire, communicate to the people their resolution, and sacrifice an animal. Those of the people who approve the war, partake of the sacrifice; throw

the hatchet into a tree, after the example of the king; and join in the subsequent war songs and dances. Those who disapprove, take no part of the sacrifice, but retire.

PHÆACIA.

In the kingdom, or rather aristocracy, of Phæacia, as represented in the Odyssey, we have a picture at full length of those forms of government which at that time prevailed in Greece.

There is a king Alcinous; there is a council of twelve other kings, princes, archons, or peers, for they are called by all these names; and there is a multitude; but the last do not appear to have any regular, legal, or customary part in the government. They might be summoned together by the heralds, or called by the sound of trumpet, or a horn, to receive information of the results of their chiefs; to assist at a sacrifice or procession; to see a stranger, or a show, or to partake of a feast; or they might assemble of themselves in a rage against an oppressor, from enthusiasm for the royal sceptre, or other causes. And the kings had often much dependence on their attachment to their hereditary right, their descent from the gods, and the sacred authority of the poets, who were generally royalists. The archons, too, were often afraid of the superstition of their people for the king, and his regal popularity. But the legal power of the people was very far from being a constitutional check; and the struggle lay between the kings and nobles. The last finally prevailed, as they ever will, against a king who is not supported by an adequate popular power. The authority in Phæacia was collected into one centre, and that centre was thirteen kings, confederated together under a president only. Each archon was a king in his own island, state, or district, in which his dignity and power were hereditary; and, in case of a foreign war, he commanded his own division in the general camp.

Ulysses is represented, at his first entrance into the Phæacian dominions, as observing and admiring the palaces of the archons, after having surveyed the gardens, palace, and particular territory of Alcinous: —

> "He next their princes' lofty domes admires,
> In sep'rate islands, crown'd with rising spires." *

* *Od.* vii. 57.

Alcinous is afterwards represented as describing the form of government to Ulysses: —

> "Twelve princes in our realm dominion share,
> O'er whom supreme imperial power I bear." *

Mr. Pope, indeed, in this translation, has given him the air of a sovereign; but there is nothing like it in the original. There, Alcinous, with all possible simplicity and modesty, only says, — "Twelve illustrious kings, or archons, rule over the people, and I myself am the thirteenth." Alcinous and his twelve archons were all present at this interview: —

> "Night now approaching, in the palace stand,
> With goblets crown'd, the rulers of the land," &c.
>
> . . . . . .
>
> "The nobles gaze, with awful fear opprest;
> Silent they gaze, and eye the godlike guest," &c. †
>
> "Pleas'd with his people's fame, the monarch hears,
> And thus, benevolent, accosts the peers," &c.
>
> . . . . . .
>
> "Th' assenting peers, obedient to the king,
> In haste their heralds send, the gifts to bring.
>
> . . . . . .
>
> The precious gifts th' illustrious heralds bear,
> And to the court th' embodied peers repair.
>
> . . . . . .
>
> Then to the radiant thrones they move in state,
> Aloft the king in pomp imperial sate." ‡

We must not forget the poet, who, with his inspiration from the Muses, was a principal support of every Grecian king. It was the bard who sung the praises of the king, and propagated the opinion that he was sprung from Jupiter, and instructed as well as dearly beloved by him.

> "The bard a herald guides; the gazing throng
> Pay low obeisance as he moves along.
> Beneath a sculptured arch he sits enthron'd,
> The peers, encircling, form an awful round.
> Lives there a man beneath the spacious skies,
> *Who sacred honors to the bard denies?*

* *Od.* viii. 425. † *Od.* vii. 182 – 194. ‡ *Od.* viii. 421 – 459.

The Muse the bard inspires, exalts his mind;
The Muse indulgent loves th' harmonious kind.
O more than man! thy soul the Muse inspires,
Or Phœbus animates with all his fires." *

Every peer, in his own district or state, had another subordinate council and a people; so that the three powers, of the one, the few, and the many, appeared in every archonship; and every archon, in his own district, claimed his office to be hereditary in his family; and all the archons agreed together to support each other in this claim, even by arms. This, therefore, was rather a confederacy of thirteen little kingdoms, than one great one. The first archon of the confederation was called king of all the people, and claimed his office as hereditary, and often as absolute. The other archons were always disposed to dispute the hereditary descent, and to make it elective. The subordinate councils of the archons, in their several districts, were probably often disposed to deny their offices to be hereditary, and to insist upon elections. Ulysses, who was himself one of the greatest and ablest of the Grecian kings, discovers his perfect knowledge of the hearts of Alcinous, his queen, and nobles, in the compliment he makes them. Addressing himself to the queen, the daughter of great Rhexenor: —

"To thee, thy consort, and this royal train,
To all that share the blessings of your reign,
. . . . . .
So may the gods your better days increase,
And all your joys descend on all your race;
So reign forever on your country's breast,
Your people blessing, by your people blest." †

This supplication was addressed to the king and queen, the princes, archons, dukes, counts, barons, peers, call them by what name you please, and it concludes with a compliment very flattering to all. Ulysses knew the ruling passion of Grecian kings and nobles to be, that their dignities, even such as had been conferred by the election of the people, should become hereditary. Mr. Pope has disguised this sentiment, and made it conformable to the notions of Englishmen and Americans; but has departed from the sense of Homer and from the fact.

* *Od.* viii. 515 – 532.

† *Od.* vii. 196 – 205.

"May you transmit to your children your possessions in your houses, and whatever gifts, rewards, or honors the people hath given you."

It is plain the kings claimed a hereditary right; yet the succession was sometimes set aside in favor of some other noble, or branch of the royal blood; and perhaps it was always set aside, when any one of the nobles had more power than the heir apparent. The nobles, too, claimed their honors to be hereditary, and they generally were so; but the people were sometimes bold enough to set up competitors, and give them trouble. But perhaps there were never any very formal elections.[1] Presenting a successor, in presence of the king and the other nobles, to the people for their acclamations, was probably the most that was done; for, as there were no records, nor written constitution, or laws, the right of kings, archons, and people, must have been very loose and undefined.

ITHACA.

The court of Ithaca, in the absence of Ulysses, is an admirable example of the intrigues of the archons, and their insatiable ambition. The throne of Ithaca, and the sceptre of Laertes and former kings, were the objects which had so many charms in the eyes of the suitors; and Penelope's hand was chiefly courted, because that would reconcile the archon who should possess her to the superstition of the people, and enable him to wield the sceptre. The suitors deny the sceptre to be hereditary; and Telemachus himself is doubtful. He threatens, indeed, to call a council or assembly of the people; but is afraid to trust them, for fear they should set up some other Grecian prince, whose blood might be nearer that of their ancient kings.

> "To tempt the spouseless queen with am'rous wiles,
> Resort the nobles from the neighb'ring isles;
> From Samos, circled with th' Ionian main,
> Dulichium, and Zacynthus' sylvan reign.
> Ev'n with presumptuous hope her bed t' ascend,
> The lords of Ithaca their right pretend.
> . . . . . .

[1] "But *perhaps* otherwise; it is as good an argument, and weighs as much." S.

My sentence hear; with stern distaste avow'd,
To their own districts drive the suitor crowd.

. . . . . .

I, to the peers assembled, shall propose
The firm resolve, I here in few disclose.
No longer live the cankers of my court;
All to your *several states* with speed resort;
Waste in wild riot what *your land* allows,
There ply the early feast and late carouse.

Elect by Jove, his delegate of sway,
With joyous pride the summons I'd obey.

. . . . . .

Should factious power dispute my lineal right,
Some *other Greeks* a fairer claim may plead,
To your pretence their title would precede.
At least, the sceptre lost, I still should reign
Sole o'er my vassals, and domestic train." *

. . . . . .

"If ruin to our royal race ye doom,
Be you the spoilers, and our wealth consume.
Then might we hope redress from juster laws,
And raise all Ithaca to aid our cause;
But while your sons commit th' unpunished wrong,
You make the arm of violence too strong." †

"To heaven, alone,
Refer the choice to fill the vacant throne.
Your patrimonial stores in peace possess,
Undoubted, all your filial claim confess.
Your private right should impious pow'r invade,
The peers of Ithaca would arm in aid." ‡

It is thus agreed, on all hands, that, as one of the archons, his hereditary title to his estates, vassals, and government, was indisputable. This was the common cause of all the archons, and they would arm in support of the claim of any one. But the throne and sceptre of Ithaca were to be disposed of by augury, by the will of Jove, signified by some omen. To this Telemachus pays some respect; but still insists on his right of blood, and says, that if the omen should be unfavorable to him, it would not promote the hopes of any of the archons of Ithaca; but some other Greeks, nearer of kin to the royal blood, would set up their claims. The archons, not likely to succeed in their scheme of getting the sceptre by the marriage of Penelope, nor

* *Od.* i. 315 – 508. † *Od.* ii. 83 – 88. ‡ *Od.* i. 509 – 514.

by persuading Telemachus to submit the question to Jupiter and his omens, and afraid to appeal to the people, or to call them out in arms to dispute the succession, knowing the family of Laertes and Ulysses to be more popular than themselves, take the resolution to assassinate the young prince: —

"But die he shall, and thus condemn'd to bleed,
Be now the scene of instant death decreed.
. . . . . .
Wait ye, till he to arms in council draws
The Greeks, averse too justly to our cause?
Strike, ere, the states conven'd, the foe betray,
Our murd'rous ambush on the wat'ry way.
Or choose ye vagrant from their rage to fly,
Outcasts of earth, to breathe an unknown sky?
. . . . . .
But if, submissive, you resign the sway,
Slaves to a boy; go, flatter and obey;
Retire we instant to our native reign,
Nor be the wealth of kings consum'd in vain." *

Telemachus had before declared, that, if any archon of Ithaca, or any other Greek, obtained the sceptre, he would no longer remain in the confederation, but would reign separately over his paternal domain. Now, Antinous declares, that, if the rest of the archons submit to the boy, he will not, but will retire to his native archonship.

"Amphinomus ascends,
Who o'er Dulichium stretch'd his spacious reign,
A land of plenty, bless'd with every grain.
. . . . . .
O friends, forbear, and be the thought withstood!
'Tis horrible to shed imperial blood;
Consult we, first, th' all-seeing powers above,
And the sure oracles of righteous Jove." †

Neither in Poland nor in Venice was the aristocratical rage to render weak, unsteady, and uncertain the royal authority, more conspicuous than it was here. They were afraid of the people and the auguries; but neither was a legal check; and we shall see, hereafter, that these struggles of the archons very soon abolished every monarchy in Greece, even that of Sparta, until it

* *Od.* xvi. 386 – 405. † *Od.* xvi. 409 – 419.

was renewed, upon another plan, by Lycurgus. And the same progress of passions, through seditions, rebellions, and massacres, must forever take place in a body of nobles against the crown, where they are not effectually restrained by an independent people, known and established in the legislature, collectively or by representation.

That the Grecian kings, claiming from Jupiter, and supported by their auguries and bards, thought themselves absolute, and often punished the crimes of the archons very tyrannically, is true. Ulysses is an example of it. Instead of bringing the suitors to trial before the nation, or their peers, he shoots them all, without judge or jury, with his own bow. A more remarkable assertion of a claim to absolute monarchy cannot be imagined.

Antinous would retire to his native district, and spend his revenues among his own people, not consume his royal wealth by attendance at a court of a confederation which would be no longer to his taste. This was a popular sentiment in his own dominions; his people wished to have their king reside among them, and were very willing to have the confederacy broken. This principle it was that afterwards crumbled all the Greek confederations to dust.

The similitude between the ancient Greek monarchies, as they are generally called, though the predominance of aristocracy in all of them is very manifest, and the feudal aristocracies described by Tacitus, is very obvious. The democratical power is nevertheless much more regular, though not independent, in the latter; for, in addition to what is before quoted, it appears that the judicial authority was commonly exercised in national assemblies: — "Licet apud concilium accusare quoque, et discrimen capitis intendere. Distinctio pœnarum ex delicto; proditores et transfugas arboribus suspendunt; ignavos, et imbelles, et corpore infames, cœno ac palude, injectâ insuper crate, mergunt. Diversitas supplicii illuc respicit, tanquam scelera ostendi opporteat dum puniuntur, flagitia abscondi. Sed et levioribus delictis, pro modo, pœna; equorum pecorumque numero convicti multantur; pars multæ regi, vel civitati, pars ipsi qui vindicatur, vel propinquis ejus exsolvitur." *

Although the mixture of monarchy, aristocracy, and democracy,

* *Germania*, c. xii.

is visible in the republic of Phæacia, yet the king appears little more among the archons than the first among equals, and the authority of the people is still more faint and feeble. In Ithaca, there appears a strong claim of sovereignty in the king, and as strong a pretension to it in the archons; and, although the people are dreaded by both, and their claim to interfere in the disposition of the crown is implicitly acknowledged, yet it seems to be as judges of certain religious ceremonies, by which the will of Jupiter was to be collected, rather than as any regular civil authority.

Homer was a royalist, at least as much as Plato and Aristotle.

"Jove loves our chief, from Jove his honor springs.
Beware! for dreadful is the wrath of kings.

. . . . . .

Be silent, wretch! and think not here allowed
That worst of tyrants, a usurping crowd.
To one sole monarch Jove commits the sway;
His are the laws, and him let all obey." *

The name of a republic is not found in any of his writings. Yet, in every Grecian government described by him, we find a mixture, not only of an aristocracy, consisting in a council of princes; but of a democracy, in an assembly of the people.

Agamemnon, in the second *Iliad*, calls together the whole body.

"The king despatched his heralds with commands
To range the camp, and summon all the bands.
The gathering hosts the monarch's word obey,
While to the fleet Atrides bends his way.
In his black ship the Pylian prince he found,
There calls a senate of the peers around.
Th' assembly plac'd, the king of men exprest
The counsels lab'ring in his artful breast.
Friends and confed'rates! with attentive ear
Receive my words, and credit what you hear;

. . . . . .

Ill fits a chief who mighty nations guides,
Directs in council, and in war presides,
To whom its safety a whole people owes;
To waste long nights in indolent repose.

. . . . . .

Now, valiant chiefs! since heaven itself alarms,
Unite, and rouse the sons of Greece to arms.

* *Il.* ii. 233 – 244.

But first, with caution, try what yet they dare,
Worn with nine years of unsuccessful war.
To move the troops to measure back the main
Be mine; and yours the province to detain.
——— The kings without delay
Dissolve the council, and their chief obey.
The sceptr'd rulers lead; the following host,
Pour'd forth by thousands, darkens all the coast.
. . . . . .
Nine sacred heralds now, proclaiming loud
The monarch's will, suspend the list'ning crowd.
. . . . . .
The king of kings his awful figure raised,
High in his hand the golden sceptre blazed —
. . . . . .
Ye sons of Mars! partake your leader's care,
Heroes of Greece, and brothers of the war!
. . . . . .
Fly, Grecians, fly! your sails and oars employ,
And dream no more of heaven-defended Troy.
His deep design unknown, the hosts approve
Atrides' speech; — the mighty numbers move." *

It appears from the whole narration, that the great body of the people were discontented and desirous of raising the siege. The king alarmed, was obliged to call them together, with an artful design to obtain their consent to persevere. He feigns an intention to return home; the people were rejoiced at it. Then Ulysses, in concert with Agamemnon, receives the sceptre of command, and endeavors to persuade the people to make another effort. To this end Ulysses harangues them.

"He runs, he flies through all the Grecian train,
Each prince of name, or chief in arms approved,
He fired with praise, or with persuasion moved.
. . . . . .
But if a clam'rous, vile plebeian rose,
Him with reproof he checked, or tamed with blows.
Be still, thou slave, and to thy betters yield,
Unknown alike in council or in field!
Ye gods! what dastards would our host command!
Swept to the war, the lumber of a land.
Be silent, wretch! and think not here allow'd
That worst of tyrants, an usurping crowd.
. . . . . .

* *Il.* ii. 61 – 174.

With words like these the troops Ulysses rul'd,
The loudest silenc'd, and the fiercest cool'd.
Back to th' assembly roll the thronging train,
Desert the ships, and pour upon the plain.

. . . . . .

Thersites only clamor'd in the throng,
Loquacious, loud, and turbulent of tongue.
Aw'd by no shame, by no respect control'd,
In scandal busy, in reproaches bold,
With witty malice studious to defame,
Scorn all his joy, and laughter all his aim.
But chief he gloried, with licentious style
To lash the great, and monarchs to revile.

. . . . . .

Spleen to mankind his envious heart possest,
And much he hated all, but most the best;
Ulysses or Achilles still his theme;
But royal scandal his delight supreme.
Long had he liv'd, the scorn of ev'ry Greek,
Vext when he spoke, yet still they heard him speak." *

If from this only, and the subsequent harangue of Thersites, we were to form a judgment, we should conclude that popular assemblies were very frequent, and that the freedom of speech in them was far advanced and well established; but the furious answer of Ulysses, and the unmerciful flogging he gives him for his boldness, in the face of the whole assembly, which is applauded universally, shows that the demagogues had yet but very little influence, very little courage, and that popular assemblies had as yet very little constitutional power.

The principles of government were very little understood, and all the political institutions extremely confused, in the time of the Trojan war, and from thence to Homer's time. Nothing was precisely defined; no laws were written. The most distinct rules, which are now to be traced, were a supremacy of kings, in religion and war. Sometimes they exercised judicial power. Monarchies were generally hereditary; yet a right of the nation to interfere and alter the succession is admitted. The right of the sons of the archons, to succeed to their estates and districts, was an agreed point among them; but these very archons chose to keep open to competition the succession to the throne, so that there might always be room for the pretensions of the most pow-

* *Il.* ii. 224 – 272.

erful, who would easily make themselves thought the most worthy. The most celebrated kings, when advanced in years and unable to sustain the fatigues of war and cares of government, were obliged to resign their power. The anxiety of Achilles, expressed to Ulysses in the Shades, is a proof of this.

> " Say if my sire, the reverend Peleus, reigns
> Great in his Pthia, and his throne maintains;
> Or, weak and old, my youthful arm demands
> To fix the sceptre steadfast in his hands?
> O might the lamp of life rekindled burn,
> And death release me from the silent urn!
> This arm, that thunder'd o'er the Phrygian plain
> And swell'd the ground with mountains of the slain,
> Should vindicate my injur'd father's fame,
> Crush the proud rebel, and assert his claim.*

Kings and their families, claiming their descent and power from Jupiter, contended very naturally and consistently that the one was hereditary and the other absolute; and, accordingly, when the prince who swayed the sceptre was active, brave, and able, he kept the archons in awe, and governed as he pleased. But when he was feeble, the archons grew ambitious, disputed the succession, and limited the royal power. To this end, both they and the kings, or heirs of kings, sometimes looked to the people, and seemed to admit in them a right to be present at the religious ceremonies, by which the will of Jupiter was to be declared; for all parties agree, that the will of Jupiter confers the sceptre, not the mere election of the people.

The right of primogeniture was favored by popular opinion, as well as hereditary descent, because the family was the family of Jupiter, related to him, and descended from him by blood; and it was natural to suppose that Jupiter's inclinations for descent and primogeniture resembled those of other fathers of families.

The chiefs, who are all called kings, as well as the head of them, or archons, were like the Teutonic counts or feudal barons, who exercised royal rights within their own districts, states, or separate territories. This principle preserved the real and legal power chiefly in their hands, and constituted the whole government more properly an aristocracy than a royalty. This gave an

* *Od.* xi. 605.

uncontrollable pride to these nobles, which could not willingly submit to the pretensions of the kings, (as representatives of Jupiter,) to omnipotence, at least to unlimited power. Hence the continual struggle between the kings and archons, from Homer's time to that great and memorable revolution throughout Greece, from monarchy to aristocracy; that is, from kings to archons. The people not yet possessing nor claiming an authority sufficiently regular and independent to be a check to monarchy or aristocracy, the latter at last prevailed over the former, as it ever did and ever will, where the contest is merely between these two.

The people, only in extraordinary cases, in the most essential matters, and when the chiefs were greatly divided, were at all consulted; yet, in the course of the struggle between the kings and archons, the multitude were so often called upon, and so much courted, that they came by degrees to claim the whole power, and prepared the way in many of the Grecian states for another subsequent revolution from aristocracy to democracy.

Through the whole of Tacitus and Homer, the three orders are visible both in Germany and Greece; and the continual fluctuations of law, the uncertainty of life, liberty, and property, and the contradictory claims and continual revolutions, arose entirely from the want of having the prerogatives and privileges of those orders defined, from the want of independence in each of them, and a balance between them.

CHAPTER X.

CONCLUSION.

By the authorities and examples already recited, you will be convinced that three branches of power have an unalterable foundation in nature; that they exist in every society natural and artificial; and that if all of them are not acknowledged in any constitution of government, it will be found to be imperfect, unstable, and soon enslaved; that the legislative and executive authorities are naturally distinct; and that liberty and the laws depend entirely on a separation of them in the frame of government; that the legislative power is naturally and necessarily sovereign and supreme over the executive; and, therefore, that the latter must be made an essential branch of the former, even with a negative, or it will not be able to defend itself, but will be soon invaded, undermined, attacked, or in some way or other totally ruined and annihilated by the former. This is applicable to every state in America, in its individual capacity; but is it equally applicable to the United States in their federal capacity?

The people of America and their delegates in congress were of opinion, that a single assembly was every way adequate to the management of all their federal concerns; and with very good reason, because congress is not a legislative assembly, nor a representative assembly, but only a diplomatic assembly.[1] A

[1] This sentence drew from Mr. Jefferson a remonstrating comment. In a letter dated Paris, 23 February, 1787, hitherto unpublished, occurs the following passage, which, in view of the subsequent history of both the parties, is worthy of record.

"I have read your book with infinite satisfaction and improvement. It will do great good in America. Its learning and its good sense will, I hope, make it an institute for our politicians, old as well as young. There is one opinion in it, however, which I will ask you to reconsider, because it appears to me not entirely accurate, and not likely to do good. 'Congress is not a legislative, but a diplomatic assembly.' Separating into parts the whole sovereignty of our states, some of these parts are yielded to congress. Upon these I should think them both legislative and executive, and that they could have been judiciary also, had not the confederation required them for certain purposes to appoint a judiciary. It has accordingly been the decision of our courts, that the confede-

single council has been found to answer the purposes of confederacies very well. But in all such cases the deputies are responsible to the states; their authority is clearly ascertained; and the states, in their separate capacities, are the checks. These are able to form an effectual balance, and at all times to control their delegates. The security against the dangers of this kind of government will depend upon the accuracy and decision with which the governments of the separate states have their own orders arranged and balanced.

The necessity we are under of submitting to a federal government, is an additional and a very powerful argument for three branches, and a balance by an equal negative, in all the separate governments. Congress will always be composed of members from the natural and artificial aristocratical body in every state, even in the northern, as well as in the middle and southern states. Their natural dispositions, then, in general will be, (whether they shall be sensible of it or not, and whatever integrity or abilities they may be possessed of,) to diminish the prerogatives of the governors and the privileges of the people, and to augment the influence of the aristocratical parties. There have been causes enough to prevent the appearance of this inclination hitherto; but a calm course of prosperity would very soon bring it forth, if effectual provision against it be not made in season. It will be found absolutely necessary, therefore, to give negatives to the governors, to defend the executive against the influence of this body, as well as the senate and representatives in their several states. The necessity of a negative in the house of representatives will be called in question by nobody.

Dr. Price and the Abbé de Mably are zealous for additional powers to congress. Full power in all foreign affairs and over foreign commerce, and, perhaps, some authority over the commerce of the states with one another, may be necessary; and it is hard to say that more authority in other things is not wanted. Yet the subject is of such extreme delicacy and difficulty, that the people are much to be applauded for their caution. To collect together the ancient and modern leagues, — the Amphictyonic, the Olynthian, the Argive, the Arcadian, and the Achæan

ration is a part of the law of the land, and superior in authority to the ordinary laws, because it cannot be altered by the legislature of any one state. I doubt whether they are at all a diplomatic assembly."

confederacies, among the Greeks; the general diet of the Swiss cantons, and the states-general of the United Netherlands; the union of the Hanse-towns, &c., which have been found to answer the purposes both of government and liberty; to compare them all with the circumstances, the situation, the geography, the commerce, the population, and the forms of government, as well as the climate, the soil, and manners of the people, and consider what further federal powers are wanted, and may be safely given, would be a useful work.

According to M. Turgot's idea of a perfect commonwealth, a single assembly is to be possessed of all authority, legislative, executive, and judicial. It will be a proper conclusion of all our speculations upon this, the most interesting subject which can employ the thoughts of men, to consider in what manner such an assembly will conduct its deliberations and exert its power. The executive power is properly the government; the laws are a dead letter until an administration begins to carry them into execution. Let us begin, then, with this. If there is an army to raise, this single assembly is to appoint all its officers. The man of the most ample fortune, the most honorable descent, the greatest abilities, especially if there is any one among them who has had experience, rendered important services, and acquired fame in war, will be chosen general. This event is a great point gained by the aristocracy; and a great advance towards the selection of one, in case of convulsions and confusions, for monarchy. The general has vast influence, of course, with the whole nation, and especially with the officers of his army; whose articles of war, and whose habits, both of obedience and command, establish a system of subordination of which he is the centre, and produce an attachment that never wears out. The general, even without being sensible of it, will naturally fall in with the views of the aristocratical body, in promoting men of family, property, and abilities; and indeed, in general, it will be his duty to do this, as such are, undoubtedly, in general, the fittest for the service. His whole corps of officers will grow habitually to respect such only, or at least chiefly, and, it must be added, because experience proves it, and the truth requires it to be mentioned, to entertain some degree of contempt for the rest of the people, as "rank and file." The general's recommendation will have great weight in the assembly, and will in

time be given chiefly, if not wholly, to men who are either of the aristocratical body themselves, or at least recommended by such as are so. All the other officers of the army are to be appointed by this assembly; and we must suppose that all the general officers and field officers will be of patrician families, because each candidate will be unknown to nine tenths of the assembly. He comes from a part of the state which a vast majority of the members of the assembly do not particularly represent and are unacquainted with; they must, therefore, take his character upon trust from his patron in the house, some member who is his neighbor, and who, perhaps, owes his election to him or his particular friends. Here is an endless source of debate and delay. When there are two or more candidates for a commission, and there will generally be several, how shall an assembly of five hundred or one hundred men, collected from all the most distant parts of a large state, become informed of the merits and pretensions of each candidate? It can only be done in public or in private. If in public, it exposes the characters of the candidates to a public discussion, which few men can bear; it consumes time without end; and it will frequently happen that the time of the whole assembly shall be wasted, and all the public affairs delayed, for days and weeks, in deliberating and debating, affirming and denying, contradicting and proving, in the appointment of a single officer; and, after all, he who has friends of the most influence in the house, who will be generally of the aristocratical complexion, will be preferred. It is moderate to say, that the loss of time and delay of business will be a greater burthen to the state than the whole support of a governor and council.

If there is a navy, the same process must be gone through respecting admirals, captains, and all other officers. All the officers of revenue, police, justice, must be appointed in the same way. Ambassadors, consuls, agents to foreign countries, must be appointed, too, by vote of assembly. This branch of business alone would fill up the whole year, and be more than could be done. An assembly must be informed before it can act. The understanding and conscience of every member should be clearly satisfied before he can vote. Information is to be had only by debate and examination of evidence. Any man may see that this must be attended with difficulty; but no man who has not seen the inside of such an assembly, can conceive the confusion,

uncertainty, and procrastination of such proceedings. The American provincial congresses had experience enough of this; and gentlemen were more convinced, by what they there saw, heard, and felt, of the necessity of three branches, than they would have been by reasoning or reading; it was generally agreed that the appointment of officers by lot would have been a more rational method.

But this is not all. The army, the navy, revenue, excise, customs, police, justice, and all foreign ministers, must be gentlemen, that is to say, friends and connections of the rich, well-born and well-educated members of the house; or, if they are not, the community will be filled with slander, suspicion, and ridicule against them, as ill-bred, ignorant, and in all respects unqualified for their trusts; and the plebeians themselves will be as ready as any to join in the cry, and run down their characters. In the second place, there never was yet a people who must not have somebody or something to represent the dignity of the state, the majesty of the people, call it what you will,—a doge, an avoyer, an archon, a president, a consul, a syndic; this becomes at once an object of ambition and dispute, and, in time, of division, faction, sedition, and rebellion.

The next inquiry is, concerning the administration of justice. Shall every criminal be brought before this assembly and tried? shall he be there accused before five hundred men? witnesses introduced, counsel heard? This again would take up more than the whole year; and no man, after all, would consider his life, liberty, or property, safe in such a tribunal. These all depend upon the disquisitions of the counsel, the knowledge of the law in the judges, the confrontation of parties and witnesses, the forms of proceedings, by which the facts and the law are fairly stated before the jury for their decision, the rules of evidence, by which the attention of the jury is confined to proper points, and the artifices of parties and counsel avoided. An assembly of five hundred men are totally incapable of this order, as well as knowledge; for, as the vote of the majority must determine, every member must be capable, or all is uncertain. Besides, it is the unanimity of the jury that preserves the rights of mankind. Must the whole five hundred be unanimous?

Will it be said that the assembly shall appoint committees to try causes? But who are to make these appointments? Will

not a few haughty palatines in the assembly have influence enough to determine the election in favor of their friends? and will not this make the judges the tools of a party? If the leaders are divided into parties, will not one prevail at one year, and another the next? and will not this introduce the most wretched of servitudes, an uncertain jurisprudence?

Will it be said that the assembly shall appoint committees for the nomination of officers? The same intrigues and greater struggles would be introduced for the place of a committee-man; and there would be frequent appeals from those committees to the body that appointed them.

Shall the assembly appoint a governor or president, and give him all the executive power? Why should not the people at large appoint him? Giving this power to the assembly will open a wider door to intrigue for the place; and the aristocratical families will be sure, nine times in ten, to carry their choice in this way; and, what is much worse, the first magistrate will be considered as dependent on every obscure member of the house, but in reality he will be dependent only on a dozen or a score, perhaps on two or three, of the whole. He will be liable to daily motions, debates, and votes of censure. Instead of thinking of his duty to the people at large, he will confine his attention chiefly to the assembly, and believe, that if he can satisfy them, or a majority of them, he has done his duty.

After all, any of these devices are only changing words; they are, in reality, erecting different orders of men, and aiming at balances, as much as the system which so much displeases M. Turgot; they are introducing, in effect, all the inequalities and disputes that he so greatly apprehends, without any of that security to the laws, which ought to be the principal object; they render the executive power, which is in truth the government, the instrument of a few grandees. If these are capable of a combination with each other, they will seldom disagree in their opinion, which is the richest man and of the first family; and, as these will be all their inquiries, they will generally carry their election. If they are divided, in constant wrangles with each other, and perpetual attacks upon the president about the discharge of his functions, they will keep the nation anxious and irritated, with controversies which can never be decided nor ended. If they agree, and the plebeians still carry the vote

against them, the choice will nevertheless probably fall upon one of their number, who will be disposed to favor them too much; but if it falls upon a plebeian, there commences at once a series of contests between the rich and the poor, which will never end but in the ruin of the popular power and the national liberty; or at least in a revolution and a new constitution. As the executive power, the essence of government, is ever odious to popular envy and jealousy, it will ever be in the power of a few illustrious and wealthy citizens to excite clamors and uneasiness, if not commotions and seditions, against it. Although it is the natural friend of the people, and the only defence which they or their representatives can have against the avarice and ambition of the rich and distinguished citizens, yet, such is their thoughtless simplicity, they are ever ready to believe that the evils they feel are brought upon them by the executive power. How easy is it, then, for a few artful men among the aristocratical body to make a president, thus appointed and supported, unpopular, though he conducts himself with all the integrity and ability which his office requires?

But we have not yet considered how the legislative power is to be exercised in this single assembly. Is there to be a constitution? Who are to compose it? The assembly itself, or a convention called for that purpose? In either case, whatever rules are agreed on for the preservation of the lives, liberties, properties, and characters of the citizens, what is to hinder this assembly from transgressing the bounds which they have prescribed to themselves, or which the convention has ordained for them? The convention has published its code and is no more. Shall a new convention be called, to determine every question which arises concerning a violation of the constitution? This would require that the convention should sit whenever the assembly sits, and consider and determine every question which is agitated in it. This is the very thing we contend for, namely,—that there may be two assemblies; one to divide, and the other to choose. Grant me this, and I am satisfied; provided you will confine both the convention and assembly to legislation, and give the whole executive power to another body. I had almost ventured to propose a third assembly for the executive power; but the unity, the secrecy, the dispatch of one man has no equal; and the executive power should be watched by all

men; the attention of the whole nation should be fixed upon one point, and the blame and censure, as well as the impeachments and vengeance for abuses of this power, should be directed solely to the ministers of one man. But to pursue our single assembly. The first year, or the first seven years, they may be moderate; especially in dangerous times, and while an exiled royal family, or exiled patricians or nobles, are living, and may return; or while the people's passions are alive, and their attention awake, from the fresh remembrance of danger and distress. But when these transitory causes pass away, as there is an affection and confidence between the people and their representatives, suppose the latter begin to make distinctions, by making exceptions of themselves in the laws. They may frank letters; they are exempted from arrests; they can privilege servants; one little distinction after another, in time makes up a large sum. Some few of the people will complain; but the majority, loving their representatives, will acquiesce. Presently they are exempted from taxes. Then their duration is too short; from annual they become biennial, triennial, septennial, for life; and at length, instead of applying to constituents to fill up vacancies, the assembly takes it upon itself, or gives it to their president. In the mean time, wars are conducted by heroes to triumph and conquest, negotiations are carried on with success, commerce flourishes, the nation is prosperous; the citizens are flattered, vain, proud of their felicity, envied by others. It would be the basest, the most odious ingratitude, at least it would be so represented, to find fault with their rulers. In a word, as long as half a score of capital characters agree, they will gradually form the house and the nation into a system of subordination and dependence to themselves, and govern all at their discretion — a simple aristocracy or oligarchy in effect, though a simple democracy in name. But, as every one of these is emulous of others, and more than one of them is constantly tormented with a desire to be the first, they will soon disagree; and then the house and the nation gradually divides itself into four parties, one of which, at least, will wish for monarchy, another for aristocracy, a third for democracy, and a fourth for various mixtures of them; and these parties can never come to a decision but by a struggle, or by the sword. There is no remedy for this, but in a convention of deputies from all parts of the state; but an equal convention can hardly

be obtained, except in times like those we have lately seen, when the danger could only be warded off by the aid and exertions of the whole body of the people. When no such danger from without shall press, those who are proud of their wealth, blood, or wit, will never give way to fair and equal establishments. All parties will be afraid of calling a convention; but if it must be agreed to, the aristocratical party will push their influence, and obtain elections even into the conventions, for themselves and their friends, so as to carry points there which perhaps they could not have carried in the assembly.

But shall the people at large elect a governor and council annually to manage the executive power, and a single assembly to have the whole legislative? In this case, the executive power, instead of being independent, will be the instrument of a few leading members of the house; because the executive power, being an object of jealousy and envy to the people, and the legislative an object of their confidence and affection, the latter will always be able to render the former unpopular, and undermine its influence. But if the people for a time support an executive disagreeable to the leaders in the legislative, the constitution will be disregarded, and the nation will be divided between the two bodies, and each must at last have an army to decide the question. A constitution consisting of an executive in one single assembly, and a legislative in another, is already composed of two armies in battle array; and nothing is wanting but the word of command to begin the combat.

In the present state of society and manners in America, with a people living chiefly by agriculture, in small numbers, sprinkled over large tracts of land, they are not subject to those panics and transports, those contagions of madness and folly, which are seen in countries where large numbers live in small places, in daily fear of perishing for want. We know, therefore, that the people can live and increase under almost any kind of government, or without any government at all. But it is of great importance to begin well; misarrangements now made, will have great, extensive, and distant consequences; and we are now employed, how little soever we may think of it, in making establishments which will affect the happiness of a hundred millions of inhabitants at a time, in a period not very distant. All nations, under all governments, must have parties; the great secret is to

control them. There are but two ways, either by a monarchy and standing army, or by a balance in the constitution. Where the people have a voice, and there is no balance, there will be everlasting fluctuations, revolutions, and horrors, until a standing army, with a general at its head, commands the peace, or the necessity of an equilibrium is made appear to all, and is adopted by all.

END OF VOLUME IV.

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